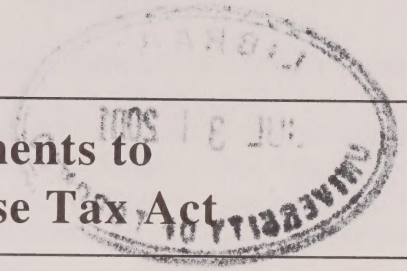
Amendments to the Excise Tax Act

Explanatory Notes

Published by
The Honourable Paul Martin, P.C., M.P.
Minister of Finance

February 2001

Canada



Amendments to the Excise Tax Act

Explanatory Notes

Published by
The Honourable Paul Martin, P.C., M.P.
Minister of Finance

February 2001

Department of Finance Canada
Ministère des Finances Canada

Available from the

Distribution Centre
Department of Finance Canada
Room P-135, West Tower
300 Laurier Avenue West
Ottawa, Ontario K1A 0G5
Tel: (613) 943-8665
Fax: (613) 996-0901

Price : $10.00 (including GST)

This document is available free on the Internet at

http://www.fin.gc.ca/

Cette publication est également disponible en français.

Cat No.: F2-154/2001E
ISBN 0-660-18477-X

PREFACE

The legislation to which these explanatory notes relate mainly implements measures relating to the Goods and Services Tax and Harmonized Sales Tax (GST/HST), including sales tax initiatives proposed in the February 28, 2000 Budget. These measures are aimed principally at improving the operation and fairness of the GST/HST in the affected areas and ensuring that the legislation accords with the policy intent.

The legislation also implements two amendments to the excise tax provisions of the Act. The first is made for greater certainty to clarify the deferral of the existing excise taxes on air conditioners installed in automobiles, and on new heavy automobiles, at the time of importation by a licensed manufacturer or sale to a licensed manufacturer. The second amendment provides discretionary power to the Minister of National Revenue to waive or cancel interest, or penalties calculated in the same manner as interest, under the excise tax system, consistent with the discretion already provided to the Minister in relation to the sales tax and income tax systems.

The explanatory notes describe the proposed amendments, clause by clause, for the assistance of Members of Parliament and Senators, as well as taxpayers and their professional advisors.

These explanatory notes are provided to assist in the understanding of the proposed amendments. They are for information purposes only and should not be construed as an official interpretation of the provisions they describe.

Table of Contents

Clause in Legis-lation	Section of the Excise Tax Act	Topic	Page
1		Short Title	7
2	23	Excise Taxes on Automobile Air Conditioners and Heavy Automobiles	7
3	88	Waiver or Cancellation of Interest or Penalty	8
4	179	Drop Shipments	9
5	213.2	Import Certificates	10
6	215	Value of Goods Re-imported After Processing	11
7	217	Definition of "Imported Taxable Supply"	12
8	218.1	Tax in Participating Province	14
9	221	Collection of Tax	15
10	221.1	Export Certificates	17
11	236.2 and 236.3	Net Tax Adjustments	19
12 to 15	254 254.1 and 256	New Housing Rebate	24
16	256.2	New Residential Rental Property Rebate	26
17	261.01	Rebate for Multi-Employer Pension Plan	37
18	262	Group of Individuals	38
19	273.1	Export Distribution Centre Certificate	39
20	278.1	Electronic Filing of Returns	59
21	V/I/2	Sale of Residential Complex by Person Other Than Builder	60
22	V/I/9	Sales of Real Property by an Individual or Personal Trust	62
23 and 24	V/II/1 and 7	Speech Therapy Services	64
25	V/III/8	Vocational Training	65
26	V/V.1/1	Supplies by a Charity	66
27 and 28	V/VI/2 and 25	Deemed Supplies by Public Institutions and Public Service Bodies	69
29	VI/V/1	Zero-rated Supplies of Goods Delivered in Canada - General Provision	70
30	VI/V/1.1 and 1.2	Zero-rated Supplies for which Certificates are Provided	71
31	VII/5.1	Goods Imported for Repair or Replacement under Warranty	75
32	VII/8.1, 8.2 and 8.3	Imported Goods Relieved under Exporters of Processing Services Program	75
33	VII/11	Imported Goods Relieved under Export Distribution Centre Program	78

Clause 1

Short Title

This clause provides that the enactment to which these notes relates may be cited as the "*Sales Tax and Excise Tax Amendments Act, 2001*".

Clause 2

Excise Taxes on Automobile Air Conditioners and Heavy Automobiles

ETA
23(7)(*e*) and (*f*)

Subsection 23(1) in Part III of the *Excise Tax Act* imposes excise taxes on goods described in Schedules I and II to the Act when they are imported into Canada or manufactured or produced in Canada and delivered to a purchaser. Among those goods are automobile air conditioners and heavy automobiles.

Section 23 is subject to subsection 23(7), which describes several circumstances in which the excise taxes are not payable. One of those circumstances, which is described by paragraph 23(7)(*e*), is when a new motor vehicle or chassis therefor is imported by a person described by paragraph (*g*) of the definition "manufacturer or producer" in subsection 2(1), who is licensed for the purposes of Part III. The intention is that the applicable excise tax is imposed at the time of delivery of the taxable goods in Canada to a purchaser, rather than at the time of importation. To achieve that result, subsection 2(4.1) deems, for all purposes of Parts I to VII of the Act, a person who imports new motor vehicles, or chassis therefor, to be the manufacturer or producer of those goods and deems the goods to be manufactured or produced in Canada.

Since the deeming provision in subsection 2(4.1) is sufficient to shift the imposition of the excise tax from the time of importation to the time of delivery to the purchaser in Canada, paragraph 23(7)(*e*) is superfluous. That paragraph is therefore repealed to avoid any confusion over the interaction of the paragraph with the deeming rule in subsection 2(4.1). This amendment is deemed to come into force

on January 1, 1994 and applies in respect of motor vehicles, or chassis therefor, imported after 1993 by licensed manufacturers described in paragraph (*g*) of the definition "manufacturer or producer".

Paragraph 23(7)(*f*) describes another circumstance when excise tax is not payable. This is when new motor vehicles, or chassis therefor, are sold to a person described in paragraph (*h*) of the definition "manufacturer or producer" in subsection 2(1), who is licensed for purposes of Part III of the Act. Relief is provided from the excise tax that would otherwise be payable at the time of delivery since the purchasing manufacturer will be liable for the tax at the time of the subsequent delivery to its customer.

Paragraph 23(7)(*f*) is amended for greater certainty that the relief it provides from payment of the excise tax applies only in respect of the sale described in that paragraph. This amendment is deemed to come into force on January 1, 1994 and applies to sales made after 1993.

Clause 3

Waiver or Cancellation of Interest or Penalty

ETA
88

The amendment adds to the *Excise Tax Act* section 88, which allows the Minister of National Revenue to waive or cancel interest, or a penalty calculated in the same manner as interest, that is otherwise payable under the non-GST/HST portions of the *Excise Tax Act*. Section 88 is added to achieve greater harmonization of the administrative rules under the excise tax system with those under the sales tax and income tax systems, which already provide for this Ministerial discretion.

The Minister's discretion under new section 88 can be exercised with respect to amounts that would otherwise become payable on or after Royal Assent.

Clause 4

Drop Shipments

ETA
179

The drop-shipment rules under the GST/HST system allow an unregistered non-resident person to acquire in Canada goods, or services in respect of goods, on a tax-free basis, provided the goods are ultimately exported or are retained in Canada exclusively for consumption, use or supply in the course of a commercial activity of a registrant. These rules are set out in section 179 of the *Excise Tax Act*.

Subsections 179(2) and (3) Storage Services

Existing subsections 179(2) and (3) exclude the service of storing goods from those services that can be provided tax-free under the drop-shipment rules. The amendments to these subsections remove the exclusion for storage services.

These amendments apply to supplies of services for which all of the consideration becomes due after February 28, 2000 or is paid after that day without having become due.

Subsection 179(7) Use of Railway Rolling Stock

Existing subsection 179(3) deals with situations where property that was supplied in Canada to a non-resident person is subsequently exported. Under this subsection, the supply of the property is deemed to have been made outside Canada (and therefore is relieved of tax) where physical possession of it is transferred in Canada to the non-resident purchaser, or to another person, who exports the property under specified circumstances. One of the conditions for this tax treatment is that the property must not have been acquired for consumption, use or supply in Canada at any time after physical possession of it is transferred to the exporter and before the property is exported.

New subsection 179(7) takes into account current industry practice with respect to sales of railway rolling stock. Railway rolling stock is commonly used to transport goods while it is itself being exported,

often by a lessee of the rolling stock who has leased it in Canada from the non-resident purchaser. As a result of this new subsection, the use of railway rolling stock in the course of its exportation will not disqualify it from tax-free treatment, provided that the rolling stock is exported within 60 days after the supplier transfers physical possession of it to the exporter.

New subsection 179(7) applies to railway rolling stock the possession of which is transferred pursuant to sales for which all of the consideration becomes due after February 28, 2000 or is paid after that day without having become due.

Clause 5

Import Certificates

ETA
213.2(1)

Under existing section 213.2 of the Act, the Minister of National Revenue may issue a written authorization (referred to as an "import certificate") to a registrant who imports goods that entitles the registrant to import certain goods on a tax-free basis under the circumstances set out in new section 8.1 of Schedule VII to the Act. That section applies where the registrant imports goods for the purpose of providing a storage or distribution service, or performing further manufacturing or processing services on the goods, and subsequently exports the goods. The section also applies where the registrant imports goods or materials (other than fuel, lubricants, and plant equipment) that will be consumed or expended directly in the processing of other goods to be exported.

The amendment to subsection 213.2(1) adds a cross-reference to new section 8.1 of Schedule VII. Wording changes are also made to this subsection to ensure that it conforms to the administrative practice with respect to the issuance of written authorizations and the assignment of identification numbers.

The amendments to subsection 213.2(1) come into force on February 1, 1992, the day on which section 213.2 came into force.

Clause 6

Value of Goods Re-imported After Processing

ETA
215(3)

New subsection 215(3) applies where goods that were originally imported in circumstances in which no tax was payable (by virtue of either new section 8.1, or new section 11, of Schedule VII) are later exported for processing and subsequently re-imported or incorporated into other processed goods that are imported. The subsection ensures that the tax in respect of the re-importation is calculated on the full value of the goods and not only on the value of the processing performed outside Canada as would be the case if section 13 of the *Value of Imported Goods (GST/HST) Regulations* applied in respect of that importation.

The exclusion from the application of section 13 of the Regulations with respect to goods described by new section 8.1 of Schedule VII (i.e., goods imported using an import certificate issued under section 213.2 of the Act) was initially intended to be achieved under the existing condition in subparagraph 13(*c*)(ii) of the Regulations. That condition requires that the goods not be included in any provision of the *Non-Taxable Imported Goods (GST) Regulations,* which is where the goods now described by section 8.1 of the Schedule were initially proposed to be prescribed. Consistent with that proposal, new subsection 215(3) applies as of February 1, 1992 to goods described by section 8.1 of Schedule VII.

The reference in subsection 215(3) to goods included in new section 11 of Schedule VII applies only with respect to goods imported after 2000, in accordance with the effective date of that section. Section 11 of the Schedule pertains to goods imported by a person authorized to use an export distribution centre certificate under new section 273.1 of the Act.

Clause 7

Definition of "Imported Taxable Supply"

ETA
217

Division IV of Part IX of the Act imposes tax in respect of certain supplies made outside Canada and in respect of other supplies on which the recipient, as opposed to the supplier, is required to account for tax. Section 217 defines the expression "imported taxable supply" for purposes of Division IV.

The amendments to the definition "imported taxable supply" are consequential on the amendments to section 221.1 dealing with export certificates, and on the introduction of the export distribution centre certificate rules under new section 273.1.

Paragraph 217*(d)* Supply Made to Recipient Using Export Certificate

Section 221.1 empowers the Minister of National Revenue to authorize a person registered for GST/HST purposes to use an export certificate to acquire goods in Canada on a tax-free basis provided that at least 90% of the registrant's sales of inventory are made outside Canada and 90% or more of the registrant's inventory purchases in Canada are for export.

Pursuant to existing subsection 221(3.1), a supplier of goods in Canada is not required to collect tax on the goods when accepting an export certificate of a recipient authorized under section 221.1, provided that the supplier did not know and could not reasonably be expected to have known that the goods would not be exported. If the goods are not in fact exported in the circumstances required for tax-free treatment, the recipient alone remains liable for the tax. The purpose for new paragraph (*d*) of the definition "imported taxable supply" is to require that the recipient who becomes liable to pay tax in these circumstances account for and remit that tax according to the rules set out in Division IV with respect to imported taxable supplies.

A related amendment adding new section 1.1 of Part V of Schedule VI to the Act has the effect of relieving the supplier of the obligation to collect tax when accepting an export certificate since, under that

section, the supply is zero-rated. Accordingly, new paragraph (*d*) of the definition "imported taxable supply" refers to a supply that is a zero-rated supply included in new section 1.1 of Part V of Schedule VI. Such a supply is defined to be an "imported taxable supply" if the goods are not exported under the required conditions or the authorization of the recipient to use the export certificate to acquire the goods on a zero-rated basis was no longer in effect at the time the supply was made. In either case, however, the supply is not an imported taxable supply if the goods are acquired for consumption, use or supply exclusively in the course of a commercial activity of the recipient.

New paragraph 217(*d*) applies to supplies made after 2000.

Paragraph 217(*e*) Supply Made to Recipient Using Export Distribution Centre Certificate

New section 273.1 empowers the Minister of National Revenue to authorize a person registered for GST/HST purposes to use a certificate (referred to as an "export distribution centre certificate") to acquire or import certain goods without the payment of GST/HST. In general terms, eligible businesses are those that export substantially all of their outputs, or operate export distribution operations for other businesses, and that provide limited value added in the course of processing goods.

New paragraph 217(*e*) includes in the definition of "imported taxable supply" a supply of property that is zero-rated by virtue of new section 1.2 of Part V of Schedule VI to the Act. That section zero-rates certain sales of property to authorized persons upon provision of an export distribution centre certificate. The section therefore relieves the supplier of the obligation to collect tax on the sale. However, if the recipient is not acquiring the property for consumption, use or supply exclusively in the course of commercial activities of the recipient and either is not acquiring the property for use or supply as "domestic inventory" or "added property" (as those expressions are defined in subsection 273.1(1)), or the recipient's authorization to use the certificate was no longer in effect at the time the supply was made, the recipient is required to self-assess tax in respect of the property under Division IV.

New paragraph 217(*e*) applies to supplies made after 2000.

Clause 8

Tax in Participating Province

ETA
218.1

Division IV of Part IX of the Act requires tax to be self-assessed by residents of Canada and registrants in respect of certain supplies (e.g., supplies made outside Canada) of property or services that are for use in Canada otherwise than exclusively in the course of a commercial activity of the recipient. Section 218.1 also imposes the provincial portion of the HST on certain of those supplies where applicable.

Subclause 8(1)

Imported Taxable Supplies

ETA
218.1(1)(*d*)

Under new paragraph 218.1(1)(*d*), the provincial portion of the HST is imposed on every registrant who is the recipient of an imported taxable supply described in new paragraph 217(*d*) or (*e*) that is made in an HST participating province. In these circumstances, the 8% component of the HST is calculated on the value of the consideration for the supply.

The supplies described in new paragraphs 217(*d*) and (*e*) are zero-rated supplies under new sections 1.1 and 1.2 respectively of Part V of Schedule VI to the Act. Because they are zero-rated supplies, the supplier is relieved of the obligation to collect tax in respect of the supplies. The supplies are of property in respect of which the recipient has used an export certificate (authorized under section 221.1) or an export distribution centre certificate (authorized under new section 273.1) in order to acquire the property on a zero-rated basis but has failed to satisfy all the conditions for tax relief. The recipient is therefore required to self-assess tax in respect of the supplies by virtue of their inclusion in the definition "imported taxable supply" unless the property is acquired for consumption, use

or supply exclusively in the course of commercial activities of the recipient.

New paragraph 218.1(1)(*d*) applies to supplies made after 2000.

Subclause 8(2)

Delivery in a Province

ETA
218.1(1.1)

New subsection 218.1(1.1) is added to ensure that the same rules apply to determine if property is delivered in a particular province for purposes of Division IV as apply for purposes of Division II. Section 3 of Part II of Schedule IX to the Act deems tangible personal property to have been delivered in a particular province where the supplier ships the property, or transfers possession of it to a common carrier or consignee engaged by the supplier on behalf of the recipient to ship the property, to a specified destination in the particular province. New subsection 218.1(1.1) ensures that this rule applies in determining if property is considered to be delivered in a participating province for the purposes of paragraph 218.1(1)(*c*).

New subsection 218.1(1.1) applies to supplies made after October 4, 2000.

Clause 9

Collection of Tax

ETA
221

Section 221 provides that, in general, every person who makes a taxable supply shall collect the tax payable in respect of the supply as agent of the Crown. However, existing subsections 221(2) to (3.1) set out exceptions to that general rule.

Subclause 9(1)

Sale of Residential Complex Back to Vendor

ETA
221(2)(*b*.1)

New paragraph 221(2)(*b*.1) provides that a supplier is not responsible for collecting tax in respect of a supply of a residential complex when the supplier and the recipient have made a joint election under amended section 2 of Part I of Schedule V (see commentary on that section). In order to make the election, the recipient must be registered for GST/HST purposes. The recipient is required to account for the tax but in most cases will not have any amount to remit since the recipient will be entitled to claim a fully offsetting input tax credit.

This amendment applies to supplies made after October 4, 2000.

Subclause 9(2)

Supplier Not Required to Collect Tax When Accepting Export Certificate

ETA
221(3.1)

Existing subsection 221(3.1) deals with the situation where a supplier of goods accepts an export certificate that the recipient has been authorized to use under section 221.1 in lieu of the recipient providing the supplier with export documentation that would normally be required in order to zero-rate the sale of the goods. Under this subsection, the supplier is relieved of any liability to collect tax on the sale provided the supplier did not know and could not reasonably be expected to have known that the goods would not be exported as required.

Subsection 221(3.1) is repealed as result of the addition of new section 1.1 of Part V of Schedule VI, which zero-rates a supply made by a registrant in such circumstances. Since the supply is zero-rated, the supplier is not required to collect tax. However, new paragraph 217(*d*) includes the supply in the definition "imported

taxable supply", thus requiring the recipient to self-assess tax in respect of the supply in the event that the recipient does not acquire the goods for consumption, use or supply exclusively in the course of commercial activities of the recipient and either the recipient's authorization to use the export certificate was not in effect at the time the supply was made or the goods were not exported under the required conditions.

Furthermore, a recipient who does not export the goods as required is liable under new subsection 236.2(1) to add an amount to net tax, which recognizes the cash-flow benefit that the recipient obtained in having acquired the property on a zero-rated basis from the supplier. Together, these amendments put in place a regime that ensures that suppliers are relieved of having to collect tax, and can properly account for a supply as a zero-rated supply for all purposes (e.g., for purposes of calculating a threshold amount), when they accept, in good faith, an export certificate. At the same time, the rules ensure that the recipients remain potentially liable if the goods are not ultimately exported as required and that there is no cash-flow benefit derived from misusing the certificate.

This amendment applies to supplies made after 2000.

Clause 10

Export Certificates

ETA
221.1

Existing section 221.1 sets out the conditions under which the Minister of National Revenue may authorize the use of export certificates. Such certificates may be provided to a supplier in lieu of evidence of export for the purpose of zero-rating a sale of goods.

The amendments to section 221.1 and related amendments to sections 217 and 218.1 and to Part V of Schedule VI to the Act align the rules for export certificates more closely with those under new section 273.1 and related sections dealing with export distribution centre certificates.

Subclause 10(1)

Authorization to Use Export Certificate

ETA
221.1(2)

Subsection 221.1(2) empowers the Minister of National Revenue to authorize a person registered for GST/HST purposes to use an export certificate for the purpose of acquiring goods on a zero-rated basis. The amendment to this subsection replaces the existing reference to the zero-rating provision under section 1 of Part V of Schedule VI to the Act with a reference to new section 1.1 of that Part.

New section 1.1 of Part V of Schedule VI applies specifically to supplies for which an export certificate is provided. Under that new section, the supply is zero-rated as long as the supplier accepting the certificate had no reason to believe the authorization to use the certificate was not in effect or that the goods would not be exported under the required conditions. Related amendments to sections 217 and 218.1 ensure that the recipient is responsible for self-assessing tax if those conditions are not met and the goods are not acquired for consumption, use or supply exclusively in the course of commercial activities of the recipient.

The amendments to subsection 221.1(2) come into force on January 1, 2001.

Subclause 10(2)

Notice of Authorization

ETA
221.1 (4)

Subsection 221.1(4) requires the Minister of National Revenue to notify a registrant authorized to use an export certificate of the authorization and its effective date. The amended subsection also requires the Minister to notify the registrant of the expiry date of the authorization and the number assigned by the Minister that identifies the registrant or that authorization and that must be disclosed by the registrant when providing the certificate for purposes of new

section 1.1 of Part V of Schedule VI. This change is consistent with the requirements under new section 273.1 relating to authorizations to use export distribution centre certificates.

This amendment applies to any authorization granted under section 221.1 after 2000, whether granted upon the first application or upon a renewal of a previous authorization. This amendment applies to authorizations that are granted before January 1, 2001 only as and when those authorizations come up for renewal. Under existing subsection 221.1(7), an authorization or a renewal of an authorization automatically expires, and therefore must be renewed to continue to be in effect, every three years.

Clause 11

Net Tax Adjustments

ETA
236.2 and 236.3

Subsection 236.2(1) Net Tax Adjustment if Invalid Use of Export Certificate

New subsection 236.2(1) deals with situations where a person provides an export certificate, within the meaning of section 221.1, at a time when the person's authorization to use the certificate is no longer in effect, or where the certificate is provided to acquire goods that are not exported under specified conditions.

A person registered for GST/HST purposes may be authorized by the Minister of National Revenue under section 221.1 to provide an export certificate to a supplier of goods resulting in the zero-rating of the supply under new section 1.1 of Part V of Schedule VI. However, where the person's authorization to use the export certificate was not in effect when the supply was made, or the goods are not exported in accordance with the conditions described in paragraphs 1(*b*) to (*d*) of Part V of Schedule VI (e.g., where the goods were used in Canada prior to being exported), the registrant is required under new subsection 236.2(1) to add an amount to the registrant's net tax. This addition to net tax reflects the fact that the registrant received a cash-flow benefit by acquiring the goods on a zero-rated basis.

Subsection 236.2(1) requires the registrant to add an amount to the net tax of the registrant for the reporting period that includes the earliest day on which tax would have become payable in respect of the supply if it had not been received on a zero-rated basis. The amount required to be added is equal to interest, at the rate prescribed for purposes of paragraph 280(1)(*b*) plus 4% per year compounded daily, calculated on the total amount of tax that would have been payable in respect of the supply. It is computed for the period beginning on the earliest day on which tax would have become payable in respect of the supply and ending on the due date for the return for the reporting period that includes that day. If that addition to net tax results in an amount of an underpayment of net tax, or an overpayment of a net tax refund, for that reporting period, interest and penalty under section 280 accrue on that amount from the day on which the net tax for the reporting period is required to be paid or the overpayment was made.

It should be noted that, while the adjustment to net tax is calculated in the same manner as an interest charge, it is not "interest" for purposes of the Act and therefore is not subject to waiver or cancellation under section 281.1.

Reference should also be made to a related amendment that adds new paragraph 217(*d*). That amendment results in the registrant having to self-assess tax in respect of the supply if the goods are not acquired by the registrant for consumption, use or supply exclusively in the course of commercial activities and either the authorization referred to in section 221.1 was not in effect at the time the supply was made or the registrant does not export the goods in accordance with the conditions described in paragraphs 1(*b*) to (*d*) of Part V of Schedule VI.

New subsection 236.2 (1) applies to supplies made after 2000.

Subsection 236.2(2) Net Tax Adjustment if Deemed Revocation of Export Certificate

New subsection 236.2(2) requires a net tax adjustment where a registrant's authorization to use an export certificate is deemed to have been revoked under subsection 221.1(6). This deemed revocation is effective immediately after the fiscal year of the registrant in which the percentage of inventory purchases for which

the registrant used the export certificate exceeds the percentage of the registrant's inventory sales made outside Canada. New subsection 236.2(2) requires the registrant to add an amount to the net tax of the registrant for the first reporting period that follows that fiscal year.

The amount required to be added to net tax for the reporting period is equal to the total GST/HST that would have been payable on purchases of inventory in Canada for which the export certificate was used in the year multiplied by an interest rate, for one month, based on the annualized rate prescribed under paragraph 280(1)(*b*) in effect at the end of the reporting period plus 4 per cent per year. This adjustment recognizes that the registrant obtained a cash-flow benefit in using the certificate to acquire inventory on a zero-rated basis. This benefit would, on average, have been enjoyed for a period of one month at the end of which an offsetting input tax credit would have been claimed had the registrant been required to pay tax on the inventory purchases.

The calculation of the adjustment under subsection 236.2(2) does not include any purchase that is included in determining a net tax adjustment under subsection 236.2(1) (e.g., a purchase made at a time when the registrant was no longer authorized to use the export certificate).

If the addition to net tax for a reporting period results in an amount of an underpayment of net tax, or an overpayment of a net tax refund, for the reporting period, interest and penalty under section 280 accrue on that amount from the day on which the net tax for the reporting period is required to be paid or the overpayment was made.

It should be noted that, while this adjustment to net tax is calculated in the same manner as an interest charge, it is not "interest" for purposes of the Act and therefore is not subject to waiver or cancellation under section 281.1.

New subsection 236.2(2) applies to supplies made after 2000.

Subsection 236.3(1) Adjustment for Invalid Use of Export Distribution Centre Certificate

A person registered for GST/HST purposes may be authorized under new section 273.1 by the Minister of National Revenue to provide an export distribution centre certificate to a supplier resulting in that supply being zero-rated under new section 1.2 of Part V of Schedule VI. New subsection 236.3(1) deals with situations where an export distribution centre certificate, within the meaning of new section 273.1, is used to acquire property when the authorization to use the certificate is no longer in effect, or the property is not acquired for use or supply as "domestic inventory" or "added property", as those terms are defined in subsection 273.1(1). In that case, the registrant is required under subsection 236.3(1) to add an amount to the registrant's net tax. This addition to net tax reflects the fact that the registrant received a cash-flow benefit by acquiring the property on a zero-rated basis. Reference should also be made to subsections 273.1(10) and (11), which set out the circumstances in which an authorization to use an export distribution centre certificate is revoked.

Subsection 236.3(1) requires the registrant to add an amount to net tax for the reporting period that includes the earliest day on which tax became payable in respect of a supply (in the event that the supply was not in fact zero-rated because the supplier could reasonably have known that the zero-rating conditions were not met) or would have become payable if the supply had not been a zero-rated supply. The amount required to be added is equal to interest, at the rate prescribed for the purposes of paragraph 280(1)(*b*) plus 4% per year compounded daily, calculated on the total amount of tax that was or would have been payable in respect of the supply. It is computed for the period beginning on the earliest day on which tax became or would have become payable in respect of the supply and ending on the due date of the return for the reporting period that includes that day.

Reference should also be made to a related amendment that adds new paragraph 217(*e*). That amendment results in the registrant having to self-assess tax in respect of a supply of property in the circumstances in which the property was not acquired for consumption, use or supply exclusively in the course of commercial activities of the registrant and either an authorization to use the export distribution

centre certificate was not in effect at the time the supply was made or the property was not acquired for use or supply as "domestic inventory" or "added property".

Subsection 236.3(1) applies to supplies made after 2000.

Subsection 236.3(2) Net Tax Adjustment if Export Distribution Centre Conditions Not Met

New subsection 236.3(2) requires a net tax adjustment where a registrant's "export revenue percentage" for a fiscal year, as defined in new subsection 273.1(1), is less than 90% or the registrant fails to satisfy the value added tests for the year. New subsection 236.3(2) requires the registrant to add an amount to the registrant's net tax for the first reporting period that follows that fiscal year.

The amount required to be added to net tax for the reporting period is equal to the total tax that would have been payable in respect of purchases and importations for which the registrant used the export distribution centre certificate in the year multiplied by an interest rate, for one month, based on the annualized rate of interest prescribed for purposes of paragraph 280(1)(*b*) in effect at the end of the reporting period plus 4 per cent per year. This adjustment recognizes that a cash flow benefit was obtained in using the certificate, which, on average, would have been enjoyed for a period of one month.

The calculation of the adjustment under subsection 236.3(2) does not include any purchase that is included in determining a net tax adjustment under subsection 236.3(1).

It should be noted that, while this addition to net tax is calculated in the same manner as an interest charge, it is not "interest" for purposes of the Act and therefore is not subject to waiver or cancellation under section 281.1.

Subsection 236.3(2) applies to supplies made after 2000.

Clauses 12 to 15

New Housing Rebate

ETA
254(1), 254.1(1), and 256(1)

Sections 254 and 256 provide for a partial rebate of sales tax paid by an individual on acquiring a newly-constructed home or on a self-built home. Section 254.1 provides for a rebate to the purchaser of a newly-constructed house who leases from the builder, on a long-term basis, the land on which the house is built.

One of the conditions to be eligible for a New Housing Rebate under any of these provisions is that the home must be considered a "single unit residential complex". The amendments to the definition of that term in each of the sections address an anomaly that, under the existing wording, results in certain new single-family dwellings not being eligible for the rebate.

The existing definition of "single unit residential complex" for purposes of the New Housing Rebate includes a multiple unit residential complex only if it does not contain more than two residential units (e.g., a duplex). "Residential unit" is defined in subsection 123(1) to include a suite or room in a hotel, motel, inn, boarding house, lodging house or similar premises. Therefore, a single-family dwelling that contains two or more rooms that are used for purposes of supplying short-term accommodation to the public, such as in the case of a Bed-and-Breakfast establishment, falls within the definition of a "multiple unit residential complex" and thus does not qualify for the new housing rebate since it contains more than two residential units.

While such suites or rooms are defined to be residential units, that part of the building in which they are located is generally carved out of what is considered to be part of the residential complex pursuant to the definition "residential complex" in subsection 123(1) (see the portion of that definition following paragraph (*e*) thereof). The exception is where the building is primarily used as a place of residence of the owner, a related individual or a former spouse, in which case the entire building is considered to be a multiple unit residential complex.

The amendments to the definition of "single unit residential complex" for purposes of these rebate provisions extend the definition to cover certain homes used primarily as a place of residence and partially to provide short term accommodation to the public. Specifically, if a multiple unit residential complex contains rooms for supply as short term accommodation that would be excluded from being part of the residential complex but for the fact that the complex is used primarily as a place of residence, that complex will be considered a single unit residential complex for purposes of the New Housing Rebate.

These amendments are effective June 1, 1997. In particular, the amendment to subsection 254(1) applies in respect of residential complexes, the ownership of which is transferred after May 1997. The amendment to subsection 254.1(1) applies in respect of residential complexes, the possession of which is given after May 1997. The amendment to subsection 256(1) applies in respect of residential complexes where the construction or substantial renovation of the complex is not substantially completed until after May, 1997.

A special transitional rule is provided to address circumstances in which all or part of the normal two-year limitation period for claiming the New Housing Rebate in respect of a home newly covered by the extended definition of "single unit residential complex" has expired. A special rule is also provided in cases where a person had previously filed a rebate claim that was assessed based on the pre-amended provisions, since the Act generally does not permit more than one rebate application to be filed with respect to the same matter. The transitional rules provide that a person has until March 31, 2003 to file an original or second application for a rebate in respect of a home newly covered by the extended definition of "single unit residential complex".

Clause 16

New Residential Rental Property Rebate

ETA
256.2

The GST/HST applies to new residential rental property when it is acquired by a landlord from a person who has constructed the property, or, on a self-assessed basis, when the person who has constructed the property is the landlord. For purchaser-landlords, the tax becomes payable upon purchase of the new property. For landlords that must self-assess tax, the tax generally becomes payable as soon as the first residential unit included in the property is rented.

New section 256.2 provides for a 36% rebate of the tax imposed under subsection 165(1) (or 2.5 percentage points of tax) in respect of newly-constructed or substantially-renovated residential rental accommodation (including buildings deemed to be substantially renovated as a result of a conversion to residential use). The rebate also applies to the construction of additions of residential units to multiple unit residential complexes and to the leasing of land, or the conversion of land, for residential purposes.

The rebate is phased out for residential units valued between $350,000 and $450,000 and is eliminated for units valued at $450,000 or more. Therefore, the maximum rebate, which corresponds to a unit value of $350,000, is $8750. In the case of leased residential land, the rebate thresholds are reduced proportionately to reflect the fact that the rebate applies only in respect of land as opposed to land and building.

Persons eligible for the New Residential Rental Property Rebate are landlords who have paid tax on the purchase of a new residential rental property from another person or landlords who must self-assess tax in respect of a new residential rental property or an addition to a multiple-unit residential rental complex. Persons who are entitled to claim input tax credits in respect of that tax are not eligible for the New Residential Rental Property Rebate. Generally, the same is true for persons who are entitled to claim other rebates in

respect of the property such as the Public Service Body Rebate or the New Housing Rebate.

The rebate applies in respect of residential rental property that is used for long-term rental accommodation, the construction, substantial renovation, conversion, or addition to which, as the case may be, commenced after February 27, 2000. It also applies to the leasing of land that is used for residential purposes where the lease agreement is entered into after February 27, 2000.

Subsection 256.2(1) Definitions

Subsection 256.2(1) defines the following terms used in new section 256.2.

"first use"

The definition "first use" is relevant in determining if a residential unit is a "qualifying residential unit", also defined in subsection 256.2 (1). The definition "first use" ensures that, in the case of a residential unit situated in a single unit residential complex, the use of the unit before the substantial completion of the construction or last substantial renovation of the unit is not considered to be the first use of the unit. In the case of a residential unit in a multiple unit residential complex, the use of the unit before the substantial completion of the construction or last substantial renovation of the complex is not considered to be the first use of the unit.

"percentage of total floor space"

The definition "percentage of total floor space" is relevant in determining the value of a "qualifying residential unit" (within the meaning of subsection 256.2(1)) located in a multiple unit residential complex for purposes of subsections 256.2(3) to (5). The value of the unit is determined by multiplying the unit's "percentage of total floor space" by the fair market value of the residential complex in which the unit is situated. This definition is also relevant to determining the portion of the tax in respect of a multiple unit residential complex that is attributable to a qualifying residential unit in the complex.

"qualifying portion of basic tax content"

The definition "qualifying portion of basic tax content" is used in subsection 256.2(6), which provides for a rebate in cases where a person is deemed to have paid tax equal to the basic tax content (as defined in subsection 123(1)) of land that will be used for residential purposes. The "qualifying portion of basic tax content", which is the amount on which the New Residential Rental Property Rebate is calculated in this case, is the portion of the basic tax content that is attributable to the 7% GST or the 7% component of the HST.

"qualifying residential unit"

A residential unit (defined in subsection 123(1)) must meet the definition of a "qualifying residential unit" under subsection 256.2(1) in order for a person to qualify for a rebate under section 256.2 in respect of the unit.

The unit must be a "self-contained residence". A "self-contained residence" is defined in subsection 256.2(1) as a residential unit that contains a private kitchen, a private bath, and a private living area. A unit can also be a "self-contained residence" if it is a suite or room in a hotel, a motel, an inn, a boarding house or a lodging house or in a residence for students, seniors, individuals with a disability or other individuals.

Another condition that must be met in order for a residential unit to be a "qualifying residential unit" is that the unit must be held for the purpose of making exempt supplies included in section 5.1, 6, 6.1 or 7 of Part I of Schedule V. Alternatively, in recognition of the fact that a particular unit in a multiple unit residential complex may be occupied by the owner, a unit can meet the definition of a "qualifying residential unit" if it is held for use as the primary place of residence of the owner, provided that at least one other unit in the complex is a "qualifying residential unit" of the owner.

In order to target the rebate in respect of residential units to persons who provide long-term residential rental accommodation, there is also a condition that those persons must reasonably expect that the first use of the units will be as primary places of residence of individuals, which could include the landlord or a relation (within the meaning of subsection 256(1)) of the landlord. Further, the use as a

primary place of residence by each such individual must be for a period of at least one year, though not necessarily under one lease (e.g., an individual could occupy a unit for one year under twelve consecutive monthly leases).

An exception to the one-year rule is provided in the case of residential units that are intended to be sold and are rented out temporarily while they are marketed for sale. The unit in this case would still meet the condition under subparagraph (*a*)(iii) of the definition "qualifying residential unit" even if the rental period were less than one year if the unit were sold within a shorter period to a buyer who was acquiring the unit as a primary place of residence of the buyer or a relation of the buyer. Alternatively, the owner or a lessor of the unit (or a relation of the owner or lessor) may choose to occupy the unit as a primary place of residence after having rented it for less than one year as a primary place of residence of other individuals.

Finally, subparagraph (*a*)(iv) of the definition "qualifying residential unit" addresses a situation where the owner of a residential unit intends that, after the unit is used as described in subparagraph (*a*)(iii) of that definition, it will be occupied by the owner or will be leased as a place of residence or lodging to an individual who is a relation, shareholder, member or partner of the owner, or with whom the owner is not dealing at arm's length. In that case, the unit must be so used as the primary place of residence of the owner or that lessee.

Paragraph (*b*) of the definition "qualifying residential unit" provides authority to extend that definition in future by regulation should unforeseen situations present themselves that are not adequately dealt with under the definition as set out in the Act.

Reference should also be made to paragraph 256.2(8)(*a*), which provides that, if substantially all of the residential units in a multiple unit residential complex containing ten or more residential units would satisfy the condition with respect to the use of the unit set out in subparagraph (*a*)(iii) of the definition "qualifying residential unit", then all of the residential units in the complex are deemed to satisfy that condition.

"relation"

For purposes of section 256.2, the term "relation" has the same meaning as for purposes of the New Housing Rebate under section 256.

Subsection 256.2(2) Reference to "Lease"

To avoid repetition throughout section 256.2, subsection 256.2(2) provides that, for purposes of the section, a reference to a "lease" shall be read as a reference to a "lease, licence or similar arrangement".

Subsection 256.2(3) Rebate in respect of Land and Building for Residential Rental Accommodation

Subsection 256.2(3) provides authority for the Minister of National Revenue to pay a New Residential Rental Property Rebate in respect of the tax paid under subsection 165(1) when a taxable sale of both land and building is made to a landlord, other than a cooperative housing corporation. (Subsection 256.2(5) provides for a rebate to a cooperative housing corporation.) The rebate under subsection 256.2(3) also applies when the builder (within the meaning of subsection 123(1)) is the landlord and has to self-assess tax in respect of a deemed sale of the property under section 191 upon giving occupancy to a lessee under an exempt supply described by section 6 or 6.1 of Part I of Schedule V.

In order for a person to qualify for the rebate, the residential complex must itself be a "qualifying residential unit" or must include one or more "qualifying residential units" of the person. The term "qualifying residential unit" is defined in subsection 256.2(1).

The rebate is determined for each "qualifying residential unit". The maximum amount rebated for each unit is 2.5 percentage points (i.e., 36% of 7%) of the tax attributable to the unit (determined, in the case of multiple unit residential complexes, by multiplying the tax paid on the complex in which the unit is situated by the unit's "percentage of total floor space", as defined in subsection 256.2(1)). For units valued between $350,000 and $450,000, the rebate is gradually phased out. No rebate is available for rental units valued at $450,000 or more. Therefore, the maximum rebate is $8750, which

corresponds to rental units valued at $350,000. When the particular "qualifying residential unit" is located in a multiple unit residential complex, the value of the unit is determined by multiplying the unit's "percentage of total floor space" by the fair market value of the residential complex.

In all cases, a person is not entitled to a rebate in respect of tax if the person is entitled to include the tax in determining an input tax credit of the person. Further, no rebate is payable to a person under section 256.2 in respect of tax paid if the person is entitled to include all or part of that tax in determining other rebates, which are referred to in subsection 256.2(9), such as the Public Service Body Rebates.

Subsection 256.2(4) Rebate in respect of Sale of Building and Lease of Land

Subsection 256.2(4) provides authority for the Minister of National Revenue to pay a New Residential Rental Property Rebate in respect of the exempt sale of a building to a person who leases the land on which the building is located. In these cases, the builder is required to self-assess tax in respect of the building and land under section 191.

In these circumstances, the purchaser/lessee is generally eligible for the New Housing Rebate under section 254.1, calculated on the value of the building. Under new subsection 256.2(4), the builder is also entitled to the New Residential Rental Property Rebate in respect of the land. In order for the builder to qualify for the rebate in this case, the lease agreement must provide for continuous possession or use of the land for a period of at least twenty years or must contain an option to purchase the land.

The amount of the New Residential Rental Property Rebate is determined by subtracting the amount of the New Housing Rebate to which the purchaser/lessee is entitled from the amount of the rebate otherwise determined for the builder, using the same thresholds of $350,000 and $450,000 as in the rebate formula under subsection 256.2(3). In the case of a single unit residential complex or a residential condominium unit, the New Residential Rental Property Rebate is available only if the purchaser is entitled to claim a New Housing Rebate. That entitlement ensures that the residential

unit has been acquired for use as the primary place of residence of the purchaser or a relation of the purchaser.

In all cases, a person is not entitled to a rebate in respect of tax if the person is entitled to include the tax in determining an input tax credit of the person. Further, no rebate is payable to a person under section 256.2 in respect of tax paid if the person is entitled to include all or part of that tax in determining other rebates referred to in subsection 256.2(9), such as the Public Service Body Rebates.

Subsection 256.2(5) Rebate for Cooperative Housing Corporation

Subsection 256.2(5) provides authority for the Minister of National Revenue to pay a New Residential Rental Property Rebate in respect of the tax paid under subsection 165(1) where a taxable sale of both land and building is made to a cooperative housing corporation. The subsection also applies where a cooperative housing corporation is itself the builder of a residential complex or addition and must self-assess tax in respect of a supply deemed to be made under section 191 upon granting possession under a lease, licence or similar arrangement of any residential unit in the complex or addition. The residential complex must itself be a "qualifying residential unit" or must include one or more "qualifying residential units" of the cooperative housing corporation.

Where a cooperative housing corporation has paid tax in respect of a residential complex of the corporation and sells a share that gives a right to the purchaser to occupy a new residential unit in the complex, the purchaser is entitled to claim the New Housing Rebate under existing subsection 255(2) as long as the unit is for use as the primary place of residence of the purchaser or a relation of the purchaser. The corporation is entitled under new subsection 256.2(5) to the New Residential Rental Property Rebate where the unit is a qualifying residential unit, subject to the same thresholds of $350,000 and $450,000 as in the case of the rebate under subsection 256.2(3). However, the rebate to the cooperative housing corporation is reduced by the amount of the New Housing Rebate to which the purchaser of the share is entitled. Where a new qualifying residential unit is first occupied by an individual other than a purchaser of a share of a corporation or a relation of such a purchaser, the corporation is entitled to the full New Residential

Rental Property Rebate for that unit since there is no New Housing Rebate available to the individual in that circumstance.

Subsection 256.2(6) Rebate for Land Leased for Residential Purposes

Subsection 256.2(6) provides authority for the Minister of National Revenue to pay a New Residential Rental Property Rebate in respect of land that is leased for residential purposes other than in a circumstance in which the lessee also purchases a residential complex situated on the land from the lessor (which is covered by subsection 256.2(4)).

Where an individual leases land on which the individual intends to construct or affix a residential complex, the individual is eligible for the New Housing Rebate under subsection 256(2) in respect of tax paid on inputs used to construct or affix the residential complex. The landowner, in turn, is required to self-assess tax in respect of the land.

Under subsection 256.2(6), the landowner is eligible for the New Residential Rental Property Rebate provided that the complex is for use as the primary place of residence of the individual or a relation of the individual. The rebate is calculated as 36% of the tax under subsection 165(1) deemed to have been paid by the landowner. If the amount deemed to have been paid is based on the "basic tax content" of the property (within the meaning of subsection 123(1)), the rebate is calculated on the "qualifying portion of the basic tax content", as defined in subsection 256.2(1), in respect of the land.

This rebate is capped and phased-out for land values above certain thresholds as in the case of the rebate for land and building under subsection 256.2(3). In this case, however, the thresholds at which the phase-out begins and at which the rebate is eliminated are lower, reflecting the fact that this rebate is in respect of land only. In this case, the rebate is gradually phased out for land valued between $87,500 and $112,500. No rebate is available for land valued at $112,500 or more.

Where an operator of a residential trailer park is first supplying a site in a park or in an addition to the park, the operator is required to self-assess tax on the fair market value of the entire park or of the

addition. Under subsection 256.2(6), the operator of the park is eligible for the New Residential Rental Property Rebate in respect of the tax under subsection 165(1) that the operator is deemed to have paid. The thresholds are the same as for the leasing of land and apply in respect of each site in the new trailer park or additions.

The rebate is determined for each site. The value of the site is determined by dividing the fair market value of the entire park or of the addition by the total number of sites in the park or addition, as the case may be. For sites valued between $87,500 and $112,500, the rebate is gradually phased out. No rebate is available for sites valued at $112,500 or more.

In all cases, a person is not entitled to a rebate in respect of tax if the person is entitled to include the tax in determining an input tax credit of the person. Further, no rebate is payable to a person under section 256.2 in respect of tax paid if the person is entitled to include all or part of that tax in determining other rebates, which are referred to in subsection 256.2(9), such as the Public Service Body Rebates.

Subsection 256.2(7) Application for Rebate and Payment of Tax

Subsection 256.2(7) requires a person to file an application for a rebate under section 256.2 within the following time periods:

- In the case of a rebate in respect of a residential unit of a cooperative housing corporation, the rebate application must be filed within two years after the end of the month in which the corporation makes the exempt supply of the unit to the occupant as described in subsection 256.2(5).

- In the case of a rebate under subsection 256.2(6) in respect of land leased for residential purposes, the rebate application must be filed within two years after the lessor is deemed to have paid and collected tax in respect of the land or in respect of the residential trailer park or addition, as the case may be.

- In the case of any other rebate to a person in respect of a residential unit, the rebate application must be filed within two years after the end of the month in which tax first becomes payable by the person, or is deemed to have been paid by the person, in respect of the unit or interest therein, or in respect of

the residential complex or addition (or interest therein) in which the unit is situated.

Subsection 256.2(7) also provides that a rebate under section 256.2 will not be paid to a person who has purchased a residential rental property from another supplier unless the person has paid all of the tax payable in respect of the purchase. In some cases involving a purchaser who is a registrant, the purchaser, as opposed to the supplier, is required to report the tax payable in a return and pay the tax in respect of the sale directly to the Receiver General, according to subsections 221(2) and 228(4). In such a case, if the purchaser files the rebate application together with the return reporting the tax, subsection 228(6) permits the purchaser to set-off the amount of the rebate against the tax owing and remit the net amount.

Subsection 228(6) provides for a similar set-off in the case of a rebate payable to a person in respect of an amount deemed to have been collected by the person (e.g., where the rebate is in respect of tax deemed to have been collected under section 191). In this case, the person is required to include the tax in the person's net tax for the reporting period in which the tax was deemed to have been collected and to remit with the return for that period any positive net tax owing. If the person files the rebate application together with the return, the rebate and any net tax owing can be set-off against each other.

Subsection 256.2(8) Special Rules

Subsection 256.2(8) sets out some general rules relevant to the determination of the amount of a rebate under section 256.2 and, in particular, the number of qualifying residential units in a building.

Paragraph 256.2(8)(*a*) Substantially-all Test

The condition on being a "qualifying residential unit" that relates to the use of the unit (i.e., the condition under subparagraph (*a*)(iii) of the definition of that expression) applies on a unit-by-unit basis in determining which residential units in a multiple unit residential complex, such as an apartment building, qualify for a rebate. However, to simplify matters in the case of large multiple unit residential complexes (i.e., complexes with ten or more units), all the units in the complex are considered to meet that particular condition

if substantially all of the units do so. The other eligibility conditions for being a "qualifying residential unit" continue to apply to each unit individually.

Subparagraph 256.2(8)(*b*)(i) Duplex as a Single Unit Residential Complex

New duplexes qualify for the existing New Housing Rebate under subsection 254(2) or 254.1(2), or section 256, where the property is used as the primary place of residence of the purchaser or a relation of the purchaser. Where the entire duplex is rented out, no New Housing Rebate is available.

For the purpose of the New Residential Rental Property Rebate, a duplex is deemed to be a single unit residential complex and may qualify for the New Residential Rental Property Rebate in the same manner as any other single unit residential complex. The thresholds and the phase-out apply to the value of the entire duplex, as is the case under the New Housing Rebate.

Subparagraph 256.2(8)(*b*)(ii) Area with Direct Internal Access to Another Area

Subparagraph 256.2(8)(*b*)(ii) provides a rule to ascertain whether a part of a residential building should be considered to be a separate residential unit for purposes of section 256.2. This rule is relevant in determining if it is the value of each of the areas separately or their collective value that one must look at when applying the thresholds in the formula for determining the New Residential Property Rebate. This rule does not apply in the case of a residential unit that is a suite or room in a hotel, a motel, an inn, a boarding house or a lodging house or in a residence for students, seniors, individuals with a disability or other individuals.

Subsection 256.2(9) Restrictions where Entitled to Other Rebate or Relief

Subsection 256.2(9) provides that a person is not entitled to a rebate under section 256.2 in respect of tax payable or deemed to have been paid if the same person could otherwise claim a rebate under any of sections 254, 256, 256.1 and 259 in respect of the tax or part of it. For example, if a municipality were entitled to claim a rebate under

section 259 equal to a portion of the tax deemed to be paid by it as builder of a seniors' residence, the municipality would not also be entitled to a rebate under section 256.2 in respect of the residence.

Subsection 256.2(9) also ensures that no rebate is available for an amount of tax for which relief is granted under any other Act of Parliament or any other law (e.g., a provincial statute).

Subsection 256.2(10) Repayment of Rebate

The New Residential Rental Property Rebate under section 256.2 is available to the builder or landlord of a new qualifying residential unit who temporarily rents the unit to an individual before the unit is sold. The rebate is available where the unit is first leased to an individual as a primary place of residence, notwithstanding that the builder or landlord intends to sell the unit at the earliest possible opportunity. However, subsection 256.2(10) provides that the amount of the rebate plus interest is subject to recapture if the unit is sold, within one year from the time it is first occupied, to a purchaser who is not acquiring it for use as the primary place of residence of the purchaser or a relation of the purchaser. This rule does not apply to units in multiple unit residential complexes.

Clause 17

Rebate for Multi-Employer Pension Plan

ETA
261.01

Section 261.01 provides for a rebate to a trust governed by a multi-employer pension plan. Subsection 261.01(3) specifies where this rebate is not available.

The amendment to this subsection adds new paragraph (3)(*c*). That paragraph provides that the trust is not entitled to include any tax under subsection 165(1) in determining a rebate under section 261.01 if that tax is in respect of the purchase, or deemed purchase under section 191, by the trust of real property in respect of which the trust is entitled to any amount of a New Residential Rental Property Rebate under new section 256.2.

This amendment comes into force on February 28, 2000.

Clause 18

Group of Individuals

ETA
262(3)

Subsection 262(3) provides rules for applying the New Housing Rebate provisions under sections 254 to 256 when more than one individual is liable for consideration and tax in respect of the same residential property. Existing subsection 262(3) makes separate reference to each type of residential complex covered by the rebate provisions, including a "single unit residential complex". In subsection 262(3), that term has the meaning assigned by subsection 123(1).

Subsection 262(3) is amended as a consequence of the broadening of the definition of "single unit residential complex" for purposes of the rebate provisions (see commentary on clauses 12 to 14). Rather than continuing to refer to each type of residential complex, amended subsection 262(3) refers only to "a residential complex".

One other wording clarification is made in subsection 262(3) to refer to a share of the capital stock of a cooperative housing corporation instead of simply a share "in" such a corporation. This change is made for consistency with other provisions of Part IX of the Act that refer to such shares.

These changes come into force on June 1, 1997, which corresponds to the coming into force of the changes to the definition "single unit residential complex" in sections 254, 254.1 and 256.

Clause 19

Export Distribution Centre Certificate

ETA
273.1

New section 273.1 empowers the Minister of National Revenue to authorize the use of export distribution centre certificates where certain criteria are satisfied. In general terms, the export distribution centre certificate system permits businesses that export substantially all of their outputs, or operate export distribution operations for other businesses, to acquire or import, on a GST/HST-free basis, inventory, property to be added to other goods in the course of processing and customers' goods on which processing services are provided. It is targeted at businesses that provide limited value added in the course of processing goods.

For any person that deals in their own inventories, the advantage of being authorized to use an export distribution centre certificate is the cash-flow benefit that derives from not having to pay tax at the time of purchase or importation of the goods and later claim back the tax as input tax credits. The same cash-flow advantage would accrue to businesses that import goods of other persons that are unregistered non-residents for the purpose of providing a service in respect of those goods. Without the benefit of the export distribution centre rules, such service providers would have to pay tax on the importation of the goods and claim the offsetting input tax credits to which they are entitled under subsection 169(2).

An additional advantage of being authorized under section 273.1 accrues to service providers that import goods of customers who are not unregistered non-resident persons. Such service providers are not entitled to claim input tax credits in respect of these importations because subsection 169(2) does not apply and the goods are not imported for consumption, use or supply in the course of the service provider's commercial activities. Under the existing rules, the owner of the goods, to the extent that the owner is jointly and severally liable for the tax on importation, is the only person that may possibly claim the input tax credit. Therefore, the service provider must pass on the documentation to the owner so that the owner, if registered for GST/HST purposes, can claim the input tax credit where the goods

are for consumption, use or supply in the course of the owner's commercial activities. In this case, the export distribution centre rules simplify the system for both the service provider and the owner of the imported goods by relieving the goods of tax if the service provider has been granted an authorization under section 273.1.

Section 273.1 comes into force on January 1, 2001 and applies to supplies made after 2000 and to goods imported after 2000.

Subsection 273.1(1) Definitions

Subsection 273.1(1) defines the following terms for purposes of new section 273.1.

"added property"

"Added property" refers to tangible personal property or software that is a component part or is property (such as a label or a screw) that is incorporated or combined with other property. Added property also includes packing materials used in packing other goods. With the use of a valid export distribution centre certificate, a registrant is entitled to import, or acquire in Canada, property for use or supply as "added property" without having to pay tax.

Added property held by a person who has been authorized to use an export distribution centre certificate does not include goods or software that are to be added to capital property of the person or that are to be added to any property of the person that is not intended for sale by the person. Added property acquired or imported by a person therefore does not include, for example, parts for the person's own capital equipment. However, added property would include parts for any type of customers' goods, even if those customers' goods were capital property of the customers. Added property would also include property to be added to goods that are inventory held for sale by the person or by the person's customers.

"base value"

"Base value", in the case of imported goods, refers to the value of the goods for purposes of Division III before the application of any rules for reducing that value such as those with respect to temporary imports. In any other case, the "base value" of property refers to the fair market value of the property.

The definition "base value" is used in subsection 273.1(4) in determining the percentage value added by a registrant authorized to use an export distribution centre certificate in respect of goods not owned by the registrant (which are referred to as "customers' goods" and defined in subsection 273.1(1)).

"basic service"

"Basic service" refers to any of the services enumerated in paragraphs (*a*) to (*i*) of the definition of that term, which are services that, at the time of announcement of the export distribution centre rules on February 28, 2000, were services that could be performed in a customs bonded warehouse pursuant to the *Customs Bonded Warehouses Regulations*. The definition "basic service" does not require that the services in fact be performed in a bonded warehouse, only that they be of a type that could be performed in a bonded warehouse if the goods in respect of which they are performed happened to be situated in such a warehouse at the time.

Further, a service listed in any of paragraphs (*a*) to (*i*) of this definition is only a "basic service" if the stage of processing of the goods in respect of which the service is performed at any time is such that it would be reasonable to perform that service at that time in a customs bonded warehouse. For example, if the service in question were testing the operation of some function of goods at an intermediate step in their processing before they were further processed and ready for distribution, that testing would not qualify as a "basic service". It would not be reasonable to perform that service in a customs bonded warehouse given the further processing required that could not be undertaken in the warehouse. That particular testing service would be excluded from the definition "basic service" notwithstanding the fact that "testing" is on the list of services that do constitute a "basic service" in other circumstances, such as the testing of the final processed goods prior to their export.

The definition "basic service" is used in the definition "processing" in subsection 273.1(1) and in subsections 273.1(2) and (4). The purpose for distinguishing between "basic services" and other services is to ensure that the specified limits on value added that restrict eligibility to use an export distribution centre certificate do not apply to services that a registrant could, without the certificate,

perform without losing the benefit of tax relief under the Customs Bonded Warehouse program.

"bonded warehouse"

"Bonded warehouse" has the meaning assigned by subsection 2(1) of the *Customs Act*. This term is used in the definition "basic service" in subsection 273.1(1).

"customer's good"

"Customer's good", in relation to a registrant, refers to tangible personal property belonging to another person that the registrant imports or obtains physical possession of in Canada for the purpose of supplying a service or added property in respect of the tangible personal property. The term "customer's good" is used in subsections 273.1(4) to (7).

"domestic inventory"

"Domestic inventory" refers to tangible personal property that a person purchases in Canada, or purchases outside Canada and imports, for the purpose of selling the property separately for consideration. Therefore, for example, property that is acquired for use in supplying a service for a single consideration and that is not intended to be sold separately would not be part of the "domestic inventory" of a person. Also, inventory acquired and sold outside Canada by a person without ever having been brought into Canada by the person is not part of the person's "domestic inventory".

The term "domestic inventory" is used in defining a person's export revenue for purposes of section 273.1. A person's "export revenue" is derived from sales of domestic inventory made outside Canada and made in Canada for export. The term "domestic inventory" is also used in new section 1.2 of Part V of Schedule VI to the Act and in new section 11 of Schedule VII in reference to property that a person authorized under section 273.1 to use an export distribution centre certificate can purchase or import on a tax-free basis.

"export revenue"

"Export revenue" of a person for a fiscal year refers to the total consideration paid or becoming due to the person in the year for:

- sales of domestic inventory of the person (as defined in subsection 273.1(1)) that are either made outside Canada or are zero-rated under Part V of Schedule VI (other than section 2.1, 3, 11, 14 and 15.1 of that Part);

- sales of added property (as defined in subsection 273.1(1)) acquired by the person for use or supply in processing in Canada property for export; and

- sales of services of processing, storing or distributing tangible personal property of other persons where the property is exported after the processing is complete.

The term "export revenue" is used in the definition "export revenue percentage" in subsection 273.1(1).

"export revenue percentage"

"Export revenue percentage" of a person is determined by dividing the person's total export revenue for a year (as defined in subsection 273.1(1)) by the person's specified total revenue for the year, also as defined in that subsection. The "export revenue percentage" of a person is relevant in determining the person's eligibility to be authorized under subsection 273.1(7) to use an export distribution centre certificate to acquire or import certain goods on a tax-free basis (see commentary on that subsection). It is also relevant in determining if the person continues to be eligible to use the certificate after having been so authorized.

"finished inventory"

"Finished inventory" of a person means property of the person, other than capital property, that is in the state in which it is intended to be sold by the person, or used by the person as added property, in the course of a business of the person.

"labelling"

"Labelling" is defined, for purposes of the definition "basic service" in subsection 273.1(1), to include marking, tagging and ticketing.

"packing"

"Packing" is defined, for greater certainty, to include unpacking, repacking, packaging and repackaging. The term "packing" is defined for purposes of the definitions "basic service" and "added property" in subsection 273.1(1).

"processing"

"Processing" is defined for purposes of section 273.1 to include adjusting, altering, assembling, and any "basic service" (as defined in subsection 273.1(1)).

"specified total revenue"

"Specified total revenue" of a person for a fiscal year is defined as the total consideration that becomes due, or is paid without having become due, to the person in the year for supplies made by the person and that is included in determining the income from a business of the person for the year, other than consideration for:

- sales of services in respect of property that is not acquired in Canada, imported or transferred to the person in Canada;

- sales of inventory that the person neither acquired in Canada nor imported; and

- sales of capital property of the person.

"substantial alteration of property"

"Substantial alteration of property" by a person in a fiscal year refers to any manufacturing or production undertaken by the person at any time in the year. It also refers to any processing undertaken by the person during the year if certain limits, specified in the definition, with respect to the value added by the person are exceeded for the year.

Where the person's processing activities are expected to constitute manufacturing or production or where the limits with respect to value added are expected to be exceeded, the person does not qualify to be authorized to use an export distribution centre certificate to acquire or import goods on a tax-free basis. Where the person begins in a year to engage in the substantial alteration of property after having been so authorized, the authorization is revoked, effective immediately after that year.

More specifically, a person is considered to be engaged in the "substantial alteration of property" in a fiscal year of the person where

(a) the person has, in the year, been engaged, in the course of a business, in any manufacturing or producing of property (other than capital property of the person), or has, in the course of a business, engaged other persons to manufacture or produce property other than capital property; or

(b) the person has, during the year and in the course of a business, undertaken, or engaged other persons to undertake, any processing to bring any property of the person to a state at which that property, or the product resulting from its processing, is finished inventory of the person if

- the percentage value added attributable to non-basic services in respect of finished inventory of the person for the year (determined under subsection 273.1(2)) exceeds 10%, and

- the percentage total value added in respect of finished inventory of the person for the year (determined under subsection 273.1(3)) exceeds 20%.

Both of these value added thresholds in respect of a person's finished inventory must be exceeded before a person is considered to have engaged in the substantial alteration of property, assuming the person's processing activities do not otherwise constitute manufacturing or production. Consequently, if a person's processing activities did not amount to the manufacture or production of goods and consisted solely of performing basic services (as defined in subsection 273.1(1)), the person would not be considered to be

engaged in the substantial alteration of property. That would be the case even if the person's percentage total value added from the performance of those basic services in respect of the person's finished inventory for the year exceeded 20%. The eligibility criteria under the export distribution centre rules do not place any limits on the extent to which a person can add value to goods by the performance of basic services as long as the person's activities do not constitute manufacturing or production.

If a person performed some non-basic services but the person's percentage total value added in respect of finished inventory of the person for the year were below 20%, the person likewise would not be considered to be engaged in the substantial alteration of property, provided again that the person were not otherwise engaged in manufacturing or production. A person in such a position would have no need to further ascertain the person's percentage value added attributable to non-basic services in respect of the person's finished inventory since the person would not have exceeded both thresholds.

It should be noted that a person's eligibility to use an export distribution centre certificate is also dependent on the extent and nature of the person's processing activities in respect of customers' goods, as measured by the percentages determined under subsections 273.1(4) and (5).

Subsection 273.1(2) Value Added Attributable to Non-Basic Services in Respect of Finished Inventory

Subsection 273.1(2) sets out a formula for determining a person's percentage value added attributable to processing undertaken by or for the person in respect of the person's finished inventory, other than any processing that constitutes a "basic service" as defined in subsection 273.1(1). The term "finished inventory" is also defined in that subsection and refers to property of the person, other than capital property, that is in the state at which it is intended to be sold by the person or used by the person as "added property", within the meaning of subsection 273.1(1).

A person's percentage value added attributable to non-basic services in respect of finished inventory of the person for a fiscal year is essentially the labour cost component (expressed as a percentage) of

the total cost of property that was finished inventory supplied, or used as added property, by the person during the year. For this purpose, the labour cost component does not include labour relating to basic services. It includes not only the internal labour costs included in the cost of inventory but also the portion of any consideration for outside contractors' processing services (other than basic services), to the extent that the cost of those services is properly chargeable to the inventory. Also excluded from the contractors' fees for purposes of this calculation is the portion of the contract price that the contractor has attributed to property supplied together with services. Therefore, where a contractor's invoice shows a reasonable breakdown between the charge for materials and the charge for labour, only the labour portion of the total charge is included in the calculation of this value added percentage.

By the term "cost" of inventory, it is meant the product costs or inventoriable costs. This does not include period costs such as office rent. The cost of inventory ordinarily will be comprised of the laid-down cost of materials plus direct labour applied to the inventory and any applicable share of indirect labour and overhead expense properly chargeable to the inventory. The overhead component may or may not include some indirect labour costs that are treated as part of the total product costs as opposed to period costs.

For the purposes of section 273.1, a person's determinations of the total cost of inventory, and of which indirect labour costs, if any, are included in the product costs, may be made in accordance with any reasonable method of inventory costing followed by the person. There are several ways in which cost may be determined. In fact, a person may, for different purposes, use different methods. For example, for internal management purposes, the person may use the absorption costing method while for financial statement purposes the person may use the variable cost method. Also, under each approach, the person can choose between alternatives such as the average-cost or specific-item methods of determining the inventoriable costs. Whichever method is chosen, it is a basic principle of accounting that, once a basis for determining cost has been selected for any purpose, it will be followed consistently for that purpose from one period to another unless circumstances warrant a change.

The percentage determined under subsection 273.1(2) is relevant to determining whether a person is considered to be engaged in the "substantial alteration of property", within the meaning of subsection 273.1(1). Where it can reasonably be expected that a person will engage in the substantial alteration of property, the person will not qualify to be authorized to use an export distribution centre certificate (see commentary on subsection 273.1(7)). If the person begins to engage in the substantial alteration of property after having been so authorized, the authorization will be revoked (see commentary on subsection 273.1(11)).

Subsection 273.1(3) Total Value Added in Respect of Finished Inventory

Subsection 273.1(3) defines a person's "percentage total value added in respect of finished inventory of the person" for a fiscal year to be the percentage that would be determined under subsection 273.1(2) for the year without excluding any amounts relating to the performance of "basic services", as defined in subsection 273.1(1). As noted in the commentary on subsection 273.1(2), the value added percentage in respect of finished inventory is essentially the percentage of the total cost of the inventory that constitutes labour costs, including the labour component of contracted services that is included in the total cost of the inventory.

As in the case of the percentage determined under subsection 273.1(2), the percentage total value added in respect of finished inventory of a person is relevant in determining whether the person is considered to be engaged in the "substantial alteration of property", within the meaning of subsection 273.1(1). Where it is expected that a person will engage in the substantial alteration of property, the person will not qualify to be authorized to use an export distribution centre certificate (see commentary on subsection 273.1(7)). If the person begins to engage in the substantial alteration of property after having been so authorized, the authorization will be revoked (see commentary on subsection 273.1(11)).

Subsection 273.1(4) Value Added Attributable to Non-Basic Services in Respect of Customers' Goods

While subsections 273.1(2) and (3) determine value-added percentages with respect to property owned by a person, subsection 273.1(4) determines a value-added percentage with respect to customers' goods. The term "customer's good" is defined in subsection 273.1(1) and refers to goods of another person that a registrant imports or obtains physical possession of in Canada for the purpose of supplying a service or added property in respect of the goods.

A person's percentage value added in respect of customers' goods is determined as an aggregate for a fiscal year for all customers' goods in respect of which consideration became due, or was paid without having become due, to the person in the year for processing services or added property supplied by the person. The calculation of a person's percentage value added in respect of customers' goods is dependant on the total of the "base values" of those goods, which is essentially the base on which the person adds value through supplying services and added property. Specifically, the "base value" of a customer's good is defined in subsection 273.1(1) to be the value of the good for purposes of Division III of Part IX of the Act, in the case of a customer's good imported by a person, and the fair market value of the good at the time possession of it is transferred to the person, in any other case.

A person's percentage value added attributable to non-basic services in respect of customers' goods for a year is determined by the formula in subsection 273.1(4). Under that formula, the person's total revenue from processing services and sales of added property (i.e., the total of all consideration from the provision of services and added property for the year), excluding amounts attributable to basic services, is divided by the sum of that total and the total of the base values of the customers' goods.

A person's percentage value added attributable to non-basic services in respect of customers' goods is relevant in determining if the person qualifies for an authorization to use an export distribution centre certificate (see commentary on subsection 273.1(7)). It is also relevant in determining if the person can continue to use a certificate

after having been so authorized (see commentary on subsection 273.1(11)).

Subsection 273.1(5) Total Value Added in Respect of Customers' Goods

Subsection 273.1(5) defines a person's "percentage total value added in respect of customers' goods" for a year to be the percentage that would be determined under subsection 273.1(4) for that year without excluding any amounts relating to the performance of "basic services", as defined in subsection 273.1(1), or added property used in the performance of basic services.

As in the case of the percentage determined under subsection 273.1(4), a person's percentage total value added in respect of customers' goods is relevant to the determination under subsection 273.1(7) of whether the person qualifies for an authorization to use an export distribution centre certificate. It is also relevant in determining whether the person can continue to use the certificate after having been so authorized.

Subsection 273.1(6) Non-arm's Length Transactions

Subsection 273.1(6) provides that the supplies that factor into the determination of a person's export revenue percentage or the value added to inventory or customers' goods are deemed to be made for consideration equal to fair market value in the case of non-arm's length supplies that are actually made for no consideration or for less than fair market value.

Subsection 273.1(7) Authorization to Use Export Distribution Centre Certificate

Subsection 273.1(7) empowers the Minister of National Revenue to issue to a person an authorization that entitles the person to import certain goods on a tax-free basis under new section 11 of Schedule VII to the Act. The authorization also entitles the person to use an export distribution centre certificate to purchase certain property on a zero-rated basis under new section 1.2 of Part V of Schedule VI. Subsection 273.1(7) sets out the criteria for determining a person's eligibility for this authorization.

An eligible person must be registered for purposes of the GST/HST and must be engaged exclusively in commercial activities. In addition, in order for a person to be authorized to begin using an export distribution centre certificate in a fiscal year, it must reasonably be expected that:

- the person will not be engaged in the substantial alteration of property in the year;

- either the person's percentage value added attributable to non-basic services in respect of customers' goods for the year will not exceed 10% or the person's total value added in respect of customers' goods for the year will not exceed 20%; and

- the person's export revenue percentage for the year will be at least 90%.

The first condition relates to the nature of the person's business activities in the year. The expression "substantial alteration of property" is defined in subsection 273.1(1). It includes any activity that constitutes manufacturing or production. A person whose activities are expected to include manufacturing or production will not qualify for an authorization to use an export distribution centre certificate, regardless of the extent of those activities.

A person will also be considered to be engaged in the substantial alteration of property if certain limits on the extent of processing undertaken by or for the person in respect of the person's own inventory are exceeded in a year. Specifically, if the person's percentage value added attributable to non-basic services in respect of finished inventory of the person for the year (as determined under subsection 273.1(2)) exceeds 10% and the person's percentage total value added in respect of finished inventory of the person for the year (as determined under subsection 273.1(3)) exceeds 20%, the person will be considered to have engaged in the substantial alteration of property in the year. If the expectation is that both those value-added thresholds will be exceeded, the person will not qualify for an authorization to use an export distribution centre certificate. On the other hand, satisfying either one of these value-added tests will satisfy the condition with respect to the extent of processing activity in respect of the person's own inventory.

To illustrate the application of these criteria, Example 1 below assumes a business whose activities consist of purchasing plain shirts and processing them for retailers according to their specifications. The business dyes the shirts according to the customers' orders for each color option and sews on the customers' logos or emblems, then tickets and individually packages the shirts in the coverings in which they will be sold to consumers by the retailers. The ticketing and packaging activities constitute "basic services" (within the meaning of subsection 273.1(1)) and the dying and sewing activities constitute non-basic services.

Example 1 – Finished Inventory – Customized Shirts

Direct Material Cost per Item	$27.00
Labour Cost per Item:	
Non-Basic Services	$ 4.20
Basic Services	$ 1.60
Non-Labour Indirect Cost per Item	$ .70
Total Product Cost per Item	$33.50
Percentage Value Added Attributable to Non-Basic Services ($4.20 ÷ $33.50)	12.5%
Percentage Total Value Added ($5.80 ÷ $33.50)	17.3%

In Example 1, the business would not be considered to be engaged in the substantial alteration of property and would therefore satisfy the value added test. This is so even though its percentage value added attributable to non-basic services exceeds 10%, since the business' percentage total value added does not exceed 20%.

For any business that is involved in processing other persons' goods (referred to as "customers' goods), additional value-added tests in respect of those goods must be satisfied in order for the business to qualify for an authorization to use an export distribution centre certificate. To illustrate the application of those criteria, Example 2 assumes a business that undertakes, for a fee, similar processing to

that undertaken by the business in Example 1, except that it does so with respect to other persons' inventories, which the business imports.

In order to qualify for an authorization under section 273.1 to import the customers' goods without the payment of tax at the time of importation, the business in Example 2 must satisfy one of two tests with respect to its value added. It must be expected that either its percentage value added attributable to non-basic services in respect of the customers' goods (as determined under subsection 273.1(4)) will not exceed 10% or that its percentage total value added in respect of those goods (as determined under subsection 273.1(5)) will not exceed 20%.

In Example 2, it is assumed that the business imports 120,000 shirts in the year, each with a "base value" (i.e., the value for purposes of Division III) of $27 per shirt.

Example 2 – Imported Customers' Goods – Customized Shirts

Total Processing Fees Charged for the Year	$ 810,000
Processing Fees Attributable to Non-Basic Services (70%)	$ 567,000
Total of Base Values of Customers' Goods and Processing Fees for the Year (3,240,000 + 810,000)	$ 4,050,000
Percentage Value Added Attributable to Non-Basic Services (567,000 ÷ 4,050,000)	14%
Percentage Total Value Added (810,000 ÷ 4,050,000)	20%

The business in Example 2 would satisfy the value-added test with respect to its customers' goods even though its percentage value added attributable to non-basic services exceeds 10%. This is so because its percentage total value added in respect of those goods does not exceed 20%.

The final eligibility criterion that must be satisfied by a business in order to be authorized to use an export distribution centre certificate relates to the extent to which the business serves the domestic and export markets. As the name suggests, the export distribution centre rules are aimed at export-oriented businesses.

To qualify initially for an authorization under section 273.1, a business' export revenue percentage for a year must be expected to be at least 90%. This percentage is defined in subsection 273.1(1). The business' total export revenue for the year is arrived at by aggregating its zero-rated sales, and sales made outside Canada, of "domestic inventory", its sales of added property acquired in Canada for processing exported goods, and its sales of processing, storage and distribution services in respect of exported goods.

By taking into account only those inventory items, added property and customers' goods that have been acquired in Canada, imported into Canada or transferred to the business in Canada, the calculation of the business' export revenue is not affected by the operations of any of its foreign branches that do not deal in goods that have been processed or acquired in Canada. The export revenue percentage is therefore focussed entirely on the business' domestic operations. The business' export revenue is then divided by the business' total revenue from supplies, again excluding supplies of goods and services that do not relate to its Canadian operations. Also excluded from this calculation are sales of capital property of the business.

When a person first requests to be authorized under section 273.1, all of the eligibility tests are applied, on the basis of reasonable expectations, with reference to the fiscal year of the person in which the authorization is proposed to take effect. The actual value added and export revenue percentages are then determined at the end of that year, and again at the end of each subsequent fiscal year in which the authorization is in effect, to determine if the person continues to be eligible to use the export distribution centre certificate.

The consequence of a person failing to meet the eligibility tests in a year is a revocation of the person's authorization to use the certificate as of the beginning of the following year (see commentary on subsections 273.1(10) and (11)). In addition, the person is required to add amounts to the person's net tax that are intended to reflect the fact that the person obtained a cash-flow benefit in having

used the certificate throughout the year (see commentary on new subsection 236.3).

Subsection 273.1(8) Application for Authorization to Use Certificate

Subsection 273.1(8) provides that an application to be authorized to use an export distribution centre certificate must be made in prescribed form containing prescribed information and must be filed with the Minister of National Revenue in prescribed manner.

Subsection 273.1(9) Notice of Authorization to Use Certificate

Where the Minister of National Revenue has authorized a person to use an export distribution centre certificate, the Minister must notify the person in writing of the authorization including the effective date, expiry date and an identification number. It is required that this information be disclosed to domestic suppliers when purchasing property on a zero-rated basis under new section 1.2 of Part V of Schedule VI to the Act. This information must also be disclosed to Customs officials when accounting for imported goods in respect of which tax relief is being claimed under new section 11 of Schedule VII to the Act.

Subsection 273.1(10) Revocation by Minister

Subsection 273.1(10) allows the Minister of National Revenue to revoke a person's authorization to use an export distribution centre certificate in a fiscal year of the person for any of the following reasons:

- the person has failed to comply with any condition attached to the authorization or with any provision of Part IX;

- the person has requested in writing that the authorization be revoked; or

- it can be reasonably be expected that

    - the person will be engaged in the substantial alteration of property in the year (as defined in subsection 273.1(1));

- the person's percentage value added attributable to non-basic services in respect of customers' goods for the year will exceed 10% and the person's total value added in respect of customers' goods for the year will exceed 20% (as determined under subsections 273.1(4) and (5) respectively); or

- the person's export revenue percentage for the year will be less than 80%.

A failure to meet the percentage value added tests or the export revenue percentage test as stated above when those percentages are determined at the end of the year would otherwise lead to an automatic revocation of the authorization under subsection 273.1(11), effective on the first day of the following year. The difference between the discretionary revocation authority of the Minister under subsection 273.1(10) and the automatic revocation under subsection 273.1(11) is that the Minister may revoke an authorization effective on any day in the year that the Minister specifies. Therefore, for example, if it can reasonably be expected, given a change in a person's business, that the person will be engaging in manufacturing or production, the Minister can revoke the person's authorization to use an export distribution centre certificate on a day specified in the revocation notice without waiting until the beginning of the next year for an automatic revocation to take effect.

If a person uses an export distribution centre certificate to purchase property on a tax-free basis after the authorization to use the certificate has ceased to be in effect for any reason, new subsection 236.3(1) requires an addition to the person's net tax. This adjustment must be made in determining net tax for the reporting period in which tax became payable (in the event that the supply was not in fact zero-rated because the supplier could reasonably have known that the zero-rating conditions were not met) or would have become payable if the supply had not been zero-rated. This adjustment is equal to interest, at the rate prescribed for purposes of paragraph 280(1)(*b*) plus 4%, on the amount of the tax that was or would have been payable, calculated from the first day on which tax became or would have become payable in respect of the supply until the due date of the person's return for the reporting period that

includes that day, when the person would normally have been entitled to claim an offsetting input tax credit.

It should also be noted that, while the initial eligibility criterion requires that a person's export revenue percentage be expected to be at least 90%, the authorization once obtained is not revoked on the basis of this criterion unless the person's actual export revenue percentage falls below 80%. There is, however, an adjustment to net tax that is required under new subsection 236.3(2) whenever the export revenue percentage is below 90% for any year in which the certificate was at any time in effect and was used. Similarly, an adjustment under that subsection is required to be made to the person's net tax for the first reporting period following a year for which the person failed to meet any of the value added tests. Note that the calculation of these adjustments under subsection 236.3(2) does not include any supply for which an addition to net tax is required under subsection 236.3(1).

Reference should also be made to new paragraph 217(*e*). That paragraph results in a person having to self-assess tax in respect of a supply of property in the circumstances in which the person's authorization to use an export distribution centre certificate was not in effect at the time the supply was made, unless the property was acquired for consumption, use or supply exclusively in the course of commercial activities of the person.

Subsection 273.1(11) Deemed Revocation of Authorization to Use Certificate

Under subsection 273.1(11), a person's authorization to use an export distribution centre certificate is deemed to have been revoked immediately after the end of a fiscal year where:

- the person engaged in the substantial alteration of property at any time in the year (as defined in subsection 273.1(1));

- the person's percentage value added attributable to non-basic services in respect of customers' goods for that year exceeds 10% and the person's percentage total value added in respect of customers' goods for that year exceeds 20% (as determined under subsections 273.1(4) and (5) respectively); or

- the person's export revenue percentage for that year is less than 80%.

Subsection 273.1(11) is subject to subsection 273.1(10) under which the Minister of National Revenue may revoke an authorization at any time in a fiscal year in the circumstances set out in that subsection.

As indicated in the commentary on subsection 273.1(10), it should be noted that, while the initial eligibility criterion requires that a person's export revenue percentage be expected to be at least 90%, the authorization once obtained is not revoked on the basis of this criterion unless the person's actual export revenue percentage falls below 80%. There is, however, an adjustment to net tax that is required under new subsection 236.3(2) whenever the export revenue percentage is below 90% for any year in which the certificate was at any time in effect and was used.

As a result of the deemed revocation of a person's authorization, the person must make an adjustment to net tax in accordance with subsection 236.3(2) for the first reporting period following the fiscal year in which the eligibility criteria ceased to be met. As well, as noted in the commentary on subsection 273.1(10), if a person uses an export distribution centre certificate to purchase goods on a tax-free basis after the authorization to use the certificate has ceased to be in effect for any reason, new subsection 236.3(1) requires an addition to the person's net tax for the reporting period in which tax became or would have become payable in respect of the supply. A particular supply is not included in determining the adjustment under subsection 236.3(2) if it is a supply for which an addition to net tax is required under subsection 236.3(1).

Subsection 273.1(12) Cessation of Authorization

The authorization to use an export distribution centre certificate will cease to have effect immediately before the earlier of the day a revocation of the authorization takes effect or the day that is three years after the effective date of the authorization. In other words, whether or not there is any change in a person's eligibility status, an authorization obtained under subsection 273.1(7) must be renewed every three years to remain valid.

Where a person's authorization no longer has effect due to the expiration of the three-year term, the person may request that the authorization be renewed by making an application in accordance with subsection 273.1(8). Where an authorization has ceased to be effective due to a revocation, reference should also be made to subsection 273.1(13), which sets out conditions on the application for a new authorization.

Subsection 273.1(13) Application After Revocation

Under subsection 273.1(13), if a person's authorization to use an export distribution centre certificate has been revoked, the person is not entitled to obtain a new authorization for at least one full fiscal year.

If a person's authorization was revoked, effective on a particular day, because the person failed to comply with any condition attached to the authorization or any provision of Part IX of the Act, the person must wait until at least two years after the particular day to obtain a new authorization. If the authorization was revoked as of a particular day for any other reason, the person must wait until the first day of the second fiscal year of the person beginning after the particular day to obtain a new authorization.

Clause 20

Electronic Filing of Returns

ETA
278.1

Section 278.1 provides for the use of electronic media for filing GST/HST returns. This provision is amended to no longer require a person who wishes to file electronically to apply to the Minister of National Revenue for approval. Under amended subsection 278.1(2), as long as the person meets the criteria set out in writing by the Minister, that person may file a return electronically. These criteria are set out in the GST/HST Memoranda Series, Chapter 7.5: *Electronic Filing and Remitting*, available at Tax Services Offices of the Canada Customs and Revenue Agency or on the internet at www.ccra-adrc.gc.ca.

Section 278.1 is also amended, as a consequence of the removal of the application requirement, by repealing existing subsections 278.1(3) and (4) and by renumbering subsection 278.1(5) as subsection 278.1(3).

These amendments come into force on October 4, 2000.

Clause 21

Sale of Residential Complex by Person Other Than Builder

ETA
Schedule V, Part I, section 2

Section 2 of Part I of Schedule V to the Act exempts a sale of a residential complex or an interest in a residential complex by a person other than a builder. This section is amended to allow parties to the sale to elect jointly, in limited circumstances, to not exempt that sale from tax. Specifically, the election is available when a buyer of a residential complex or interest in a residential complex subsequently sells it back to the vendor pursuant to a right or obligation provided for under the original purchase and sale agreement between the parties.

If the election is made, the sale back to the vendor is taxable. The person returning the complex or interest is entitled to recover, either as an input tax credit (if the person is a registrant) or as a rebate under section 257 (if the person is not a registrant), the amount of GST or HST previously paid, not exceeding the tax payable on the sale back to the vendor. The recipient is entitled to an input tax credit equal to the GST or HST paid if the complex or interest is for use or re-supply in commercial activities.

Under the existing legislation, the person returning the complex cannot recover the tax that was paid on the purchase of the complex. The election under section 2 places a person who returns an unused residential complex in a similar position as a person who returns new goods to the vendor and receives a credit or refund for the GST or HST that was originally paid on the sale of the goods.

New subparagraphs 2(*b*)(i) and (ii) provide that the vendor must have made the last sale of the complex or interest therein to the

person returning it. Where that person is a personal trust, the vendor must have made the last sale of the property to either the trust, the settlor of the trust or, in the case of a testamentary trust, the deceased individual.

New subparagraph 2(*b*)(iii) provides that the sale back to the vendor by a person must occur not later than one year after the earlier of the day the person (or the settlor or deceased individual as the case may be) obtained possession of the complex and the day that person obtained ownership of the complex under the original purchase and sale agreement. In the case of an interest in a residential complex, the sale back must occur not later than one year after the day ownership of the interest was transferred under the original purchase and sale agreement.

New subparagraph 2(*b*)(iv) specifies that the complex must not have been occupied by an individual as a place of residence or lodging after the construction or last substantial renovation of the complex was substantially completed.

New subparagraph 2(*b*)(v) provides that the resale must be pursuant to a right (such as a right of first refusal) or obligation to buy back the complex or interest. This right or obligation must be pursuant to the original purchase and sale agreement between the parties.

New subparagraph 2(*b*)(vi) specifies that the election must be made in prescribed form jointly by the parties to the resale transaction. The person buying back the complex or interest is responsible for filing the election with the tax return in which that person reports the tax payable on the supply. New paragraph 221(2)(*b*.1) makes that person responsible for accounting for the GST/HST on the supply. Ordinarily, there will be no amount of tax to remit since the person will be entitled to a fully offsetting input tax credit.

This amendment applies to sales of residential complexes or interests therein back to the original vendor that are made after October 4, 2000.

Clause 22

Sales of Real Property by an Individual or Personal Trust

ETA
Schedule V, Part I, paragraph 9(2)(*a*)

Subsection 9(2) of Part I of Schedule V to the Act exempts sales of real property by an individual or personal trust, other than those sales that are described in the paragraphs under the subsection.

Subclause 22(1)

Exclusion for Real Property Used in a Business

ETA
Schedule V, Part I, paragraph 9(2)(*a*)

Existing paragraph 9(2)(*a*) of Part I of Schedule V specifically excludes from the exemption under subsection 9(2) of that Part the supply by an individual or personal trust of real property used as capital property primarily in a business carried on by the individual or trust with a reasonable expectation of profit.

New subparagraph 9(2)(*a*)(ii) also excludes from this exemption a sale of real property made by an individual or personal trust that is a registrant if the real property was last used as capital property primarily in making taxable supplies by way of lease, license or similar arrangement of that property, even if the property was not so supplied with a reasonable expectation of profit. The supply is also excluded from the exemption if the individual or trust is a registrant and the real property was last used as capital property primarily in a combined use of carrying on a business with a reasonable expectation of profit and of making taxable supplies by way of lease, license or similar arrangement of that property. In these circumstances, the seller would have been entitled to claim input tax credits in respect of the property or improvements to it. Therefore, it is not appropriate that the subsequent sale of the property be exempt.

This amendment applies to supplies by way of sale made after October 4, 2000.

Subclause 22(2)

Real Property Sold Back to Vendor

ETA
Schedule V, Part I, paragraph 9(2)(*f*)

New paragraph 9(2)(*f*) of Part I of Schedule V allows parties to a sale of real property to elect jointly, in limited circumstances, to not exempt that supply from tax. Specifically, the election is available when an individual or personal trust has bought taxable real property and subsequently sells it back to the vendor.

If the election is made, the sale back to the vendor is taxable. The person returning the real property is entitled to recover, either as an input tax credit (if the person is a registrant) or as a rebate under section 257 (if the person is not a registrant), the amount of GST or HST previously paid not exceeding the tax payable on the sale back to the original vendor. The original vendor is entitled to an input tax credit equal to the GST or HST paid if the real property is for use or re-supply by the vendor in commercial activities.

Under the existing legislation, the person returning the real property cannot recover the tax that was paid on the purchase of the real property. The election under paragraph 9(2)(*f*) places a person who returns real property in a similar position as one who returns new goods to the vendor and receives a credit or refund for the GST or HST that was originally paid on the sale of the goods.

The election must be made in prescribed form jointly by the parties to the resale transaction. The person buying back the real property is responsible for filing the election with the tax return in which that person reports the tax payable on the supply.

New subparagraph 9(2)(*f*)(i) specifies that the vendor must have made the last sale of the real property to the person returning it. Where that person is a personal trust, the vendor must have made the last sale of the property to either the trust or the settlor of the personal trust.

New subparagraph 9(2)(*f*)(ii) provides that the resale back to the vendor must occur not later than one year after the earlier of the day the individual, personal trust or settlor, as the case may be, obtained

possession of the real property and the day they obtained ownership of the real property.

New subparagraph 9(2)(*f*)(iii) provides that the resale must be pursuant to a right (such as a right of first refusal) or obligation of the vendor to buy back the real property. This right or obligation must be pursuant to the original purchase and sale agreement between the parties.

This amendment applies to supplies by way of sale of real property back to the original vendor that are made after October 4, 2000.

Clauses 23 and 24

Speech Therapy Services

ETA
Schedule V, Part II, sections 1 and 7

Section 7 of Part II of Schedule V to the Act exempts health care practitioners' services that are exempt in all provinces from the GST/HST even when supplied in a province that does not cover the service under its provincial health care plan. The services that are exempt under section 7 are those that are provided in a practice that is regulated as a health care profession by the governments of at least five provinces. Since that policy criterion was not met in the case of speech therapy services, amendments contained in the *Sales Tax and Excise Tax Amendments Act, 1999* had the effect of removing, as of January 1, 2001, speech therapy services from the list of services that are exempt under section 7.

However, given that speech therapists are in the process of becoming regulated in a fifth province, the amendments under clauses 23 and 24 continue the exemption for speech therapy services for another year to the end of 2001. If, at that time, the policy criterion for exemption under section 7 is met, a further amendment will be required to continue the exemption for speech therapy services after that date.

Clause 25

Vocational Training

ETA
Schedule V, Part III, section 8

Existing section 8 of Part III of Schedule V to the Act exempts tuition or examination fees in respect of courses supplied by the specified educational institutions leading to certificates, diplomas, licences, or similar documents, or classes or ratings in respect of licences, that attest to the competence of individuals to practice or perform a trade or vocation. The exemption is subject to conditions set out in existing paragraphs (*a*) to (*c*) of the section. Those conditions limit the application of the exemption to cases where the documents, classes or ratings are prescribed by regulation or where the supplier is either federally or provincially regulated or is a non-profit organization or public institution (within the meaning of subsection 123(1) of the Act).

The section is amended to also apply to supplies made by governments. In addition, the amendments repeal the conditions under existing paragraphs 8(*a*) to (*c*). The repeal of those conditions ensures that similar vocational training provided in different provinces receives the same GST/HST treatment regardless of the regulatory regime with respect to vocational schools that exists in each province.

As well, the amended provision provides an authority for suppliers to elect not to have their supplies exempted under this section. Where the election is made by a supplier in prescribed form containing prescribed information, supplies that would otherwise be exempt under the section made by the supplier will be taxable (assuming the supplies are not covered by another exempting provision).

Finally, for greater consistency between the English and French versions, the term "actes" in the French version of the section is replaced with the term "documents".

These amendments, other than the addition of the election, apply to supplies for which all of the consideration becomes due after October 4, 2000 or is paid after that day without having become due.

The amendments also apply to supplies for which consideration became due or was paid on or before that day unless any amount was charged or collected as or on account of tax under Part IX of the Act in respect of the supply on or before that day (i.e., unless the supplier had already treated the supply as taxable).

The amendment adding the election applies only to supplies for which all of the consideration becomes due after October 4, 2000 or is paid after that day without having become due.

Clause 26

Supplies by a Charity

ETA
Schedule V, Part V.1, section 1

Section 1 of Part V.I of Schedule V to the Act exempts all supplies of property and services made by a charity except those listed in the paragraphs under the section.

Subclauses 26(1) and (4)

Deemed Supplies

ETA
Schedule V, Part V.1, paragraph 1(*b*)

Paragraph 1(*b*) of Part V.1 of Schedule V excludes from exemption under section 1 of the Part a supply that is deemed under Part IX of the Act to have been made by a charity. This paragraph is amended to provide, for greater certainty, that it does not exclude a supply from exemption by reason only of the supply having been deemed under section 136.1 of the Act to have been a separate supply for each payment period under a lease, licence or similar arrangement or for each billing period under an agreement for the provision of an ongoing service.

As this amendment is made for clarification purposes only, it applies to any supply that is deemed to have been made under section 136.1 of the Act for a lease interval or billing period beginning on or after April 1, 1997, which coincides with the introduction of that section.

Subclauses 26(2) and (5)

Leases, etc., of Personal Property in Conjunction with Exempt Supplies of Real Property

ETA
Schedule V, Part V.1, paragraph 1(*c*)

Paragraph 1(*c*) of Part V.1 of Schedule V excludes a supply of personal property from exemption under section 1 of the Part if, immediately before the time at which tax would become payable in respect of the supply if it were a taxable supply, the property is used, otherwise than in making the supply, in a commercial activity or, in the case of capital property, "primarily" in a commercial activity. The application of paragraph 1(*c*) to supplies of personal property operates contrary to an intended policy change, announced in April 1996, to exempt all supplies by a charity of personal property by way of lease licence or similar arrangement when made in conjunction with an exempt supply by way of lease, licence or similar arrangement of real property (e.g., the rental of a projector together with a meeting room). Therefore, the paragraph is amended to exclude supplies by way of lease, licence or similar arrangement of personal property made in conjunction with exempt supplies by way of lease, licence or similar arrangement of real property.

Paragraph 1(*c*) of Part V.1 is also amended to clarify that the relevant time for determining whether the last use of personal property was in a commercial activity is immediately before the time at which tax would "first" become payable in respect of the supply if it were a taxable supply. This clarifies the application of the provision in situations where tax in respect of the supply would become payable at more than one time (e.g., when part of the consideration for a sale is not ascertainable at the time when tax becomes payable on the ascertainable consideration).

The amendments to paragraph 1(*c*) apply to supplies for which consideration becomes due after 1996 or is paid after 1996 without having become due unless a charity treated the supply as taxable (i.e., the charity charged or collected any amount as or on account of tax in respect of the supply on or before October 4, 2000).

Subclauses 26(3) and (5)

Supplies of Real Property by way of Lease, Licence or Similar Arrangement

ETA
Schedule V, Part V.1, paragraph 1(*l*)

Paragraph 1(*l*) of Part V.1 of Schedule V excludes a supply of real property from exemption under section 1 of that Part if the property was used, otherwise than in making the supply, primarily in a commercial activity immediately before the time at which tax would become payable in respect of the supply if it were a taxable supply. The application of paragraph 1(*l*) to supplies by way of lease, licence or similar arrangement operates contrary to an intended policy change, announced in April 1996, to exempt all supplies by a charity of real property by way of lease, licence or similar arrangement regardless of how the property was previously used. Accordingly, amended paragraph 1(*l*) applies only to supplies by way of sale of real property. The effect of this change is to allow supplies by way of lease, licence or similar arrangement of real property to fall within the exemption under section 1 regardless of the prior use of the property.

Paragraph 1(*l*) is also amended to clarify that the relevant time for determining whether the last use of real property was primarily in a commercial activity is immediately before the time at which tax would "first" become payable in respect of the supply if it were a taxable supply. This clarifies the application of the provision in situations where tax in respect of the supply would become payable at more than one time (e.g., when part of the consideration for a sale is not ascertainable at the time when tax becomes payable on the ascertainable consideration).

This amendment applies to supplies for which consideration becomes due after 1996 or is paid after 1996 without having become due unless the charity treated the supply as taxable (i.e., the charity charged or collected any amount as or on account of tax in respect of the supply on or before October 4, 2000).

Subclause 26(6)

Transitional Rule – Change in Use Caused by Enactment of Amendments

Subclause 26(6) ensures that a charity will not have to self-assess tax in respect of a cessation or reduction of use of capital property in commercial activities of the charity resulting solely from the changes that exempted all supplies by the charity by way of lease, licence or similar arrangement of real property and of personal property supplied in conjunction with such exempt supplies of real property. It should be noted that this transition rule does not apply to any actual change in how a charity uses property nor to a change of use in commercial activities resulting from a person becoming a charity.

For the purpose of establishing the "basic tax content" (as defined in subsection 123(1) of the Act) of capital property of a charity, subclause (6) also ensures that any tax that would otherwise be required to be added to the net tax of the charity in the absence of this transition rule is considered to be an amount of tax that was rebated to the charity. This ensures that the proper result is obtained with respect to the calculation of any amount to be added to net tax, or to be credited, on any future change in use of the capital property.

Clauses 27 and 28

Deemed Supplies by Public Institutions and Public Service Bodies

ETA
Schedule V, Part VI, paragraphs 2(*b*) and 25(*b*)

Section 2 of Part VI of Schedule V to the Act exempts all supplies of personal property and services made by a public institution (as defined in subsection 123(1) of the Act) except those listed in the paragraphs under the section. Paragraph 2(*b*) excludes from the exemption a supply that is deemed under Part IX of the Act to have been made.

Paragraph 2(*b*) is amended to provide, for greater certainty, that it does not apply to exclude a supply from exemption by reason only of the supply having been deemed under section 136.1 of the Act to have been a separate supply for each payment period under a lease,

licence or similar arrangement or for each billing period under an agreement for the provision of an ongoing service. An identical amendment is made to paragraph 25(*b*) of the Part, which deals with supplies of real property by public service bodies (also as defined in subsection 123(1) of the Act).

As these amendments are made for clarification purposes only, they apply to supplies that are deemed to have been made under section 136.1 of the Act for lease intervals or billing periods beginning on or after April 1, 1997, which corresponds to the introduction of that section.

Clause 29

Zero-rated Supplies of Goods Delivered in Canada - General Provision

ETA
Schedule VI, Part V, paragraph 1(*e*)

Section 1 of Part V of Schedule VI to the Act zero-rates supplies of goods that are delivered in Canada and exported by the purchaser. Paragraph 1(*e*) requires that the supplier maintain evidence satisfactory to the Minister of National Revenue that the goods were, in fact, exported.

The condition in existing paragraph 1(*e*) of Part V is satisfied if, in lieu of evidence of export, the supplier is provided with an export certificate that the recipient has been authorized to use under section 221.1 of the Act. Section 221.1 provides that, where at least 90% of a registrant's inventory purchases in a 12-month period will be of goods that will be exported in accordance with section 1 of Part V of Schedule VI, and at least 90% of the registrant's inventory sales will be of inventory sold outside Canada without having been used or altered in Canada, the registrant may be authorized to provide suppliers with an export certificate to satisfy the requirement in paragraph 1(*e*) of Part V of the Schedule.

Paragraph 1(*e*) is amended to remove the reference to an export certificate because a separate zero-rating provision is added, which deals specifically with supplies for which an export certificate under section 221.1 is provided (see commentary on new section 1.1 of

Part V of Schedule VI). A related amendment repeals subsection 221(3.1), which is no longer necessary since, under the new zero-rating provision, the supply is zero-rated (thereby automatically relieving the supplier of the obligation to collect tax) in any case where the supplier had no reason to believe that the property would not be exported in the required circumstances.

Another related amendment adds new paragraph 217(*d*), which ensures that, if the property purchased on a zero-rated basis with the use of the export certificate is not in fact exported as required, the recipient is liable to self-assess tax on the supply as an "imported taxable supply" according to the rules under Division IV, unless the recipient is acquiring the property for consumption, use or supply exclusively in the course of commercial activities. Furthermore, a recipient who does not export the goods as required is liable under new subsection 236.2(1) to add an amount to net tax, which recognizes the cash-flow benefit that the recipient obtained in having acquired the property on a zero-rated basis from the supplier.

Together, these amendments put in place a regime that ensures that suppliers are relieved of having to collect tax, and can properly account for a supply as a zero-rated supply for all purposes (e.g., for purposes of calculating a threshold amount), when they accept, in good faith, an export certificate. At the same time, the rules ensure that the recipient remains potentially liable if the property is not ultimately exported as required and that there is no cash-flow benefit derived from misusing the certificate.

The amendment to paragraph 1(*e*) of Part V of Schedule VI applies in respect of supplies made after 2000.

Clause 30

Zero-rated Supplies for which Certificates are Provided

ETA
Schedule VI, Part V, sections 1.1 and 1.2

Clause 30 adds new sections 1.1 and 1.2 to Part V of Schedule VI to the Act. These sections zero-rate supplies for which an export certificate (within the meaning of section 221.1 of the Act) or an

export distribution centre certificate (within the meaning of new section 273.1 of the Act) is provided by the recipient to the supplier.

Section 1.1 Supply for which Export Certificate is Provided

New section 1.1 of Part V of Schedule VI to the Act zero-rates a supply of goods for which an export certificate, within the meaning of section 221.1 of the Act, is provided by the recipient. Under the existing legislation, such a supply may be zero-rated under section 1 of that Part.

As in the case of section 1 of the Part, new section 1.1 does not apply to excisable goods (as defined in subsection 123(1) of the Act) or to continuous transmission commodities to be transported by or on behalf of the recipient by means of a wire, pipeline or other conduit. Such supplies are covered under separate zero-rating provisions.

The existing zero-rating conditions under section 1 of Part V of Schedule VI require that, in order for a supply to qualify as a zero-rated supply under that section, the recipient who provides an export certificate must actually export the property in the circumstances described in that section. If the property is not so exported, the supplier is, under existing subsection 221(3.1), nonetheless relieved of all liability as long as the supplier had no reason to believe that the property would not in fact be exported as required. However, because the supply in that case is technically not zero-rated, it should not be counted among the supplier's zero-rated supplies for any purpose. The latter poses a problem in that the supplier does not necessarily have knowledge of the ultimate status of the supply.

Under new section 1.1 of Part V of Schedule VI, as long as the supplier satisfies the condition that the supplier did not know and could not reasonably be expected to have known that the recipient's authorization to use an export certificate was not in effect or that the property would not be exported as required, the supply is zero-rated, regardless of whether the property is ever actually exported. A related amendment repeals subsection 221(3.1), which is no longer necessary. Provided the supplier so accepted the certificate in good faith, the recipient alone remains potentially liable under new subsection 236.2(1) and/or under Division IV as a result of new paragraph 217(*d*).

In the event that the recipient's authorization to provide the export certificate was not in effect or the property was not exported as required, new subsection 236.2(1) requires the recipient to add an amount to the net tax of the recipient for the reporting period that includes the earliest day on which tax became or would have become payable in respect of the supply if it had not been received on a zero-rated basis. The amount required to be added is equal to interest, at the rate prescribed for purposes of paragraph 280(1)(*b*) plus 4% per year compounded daily, calculated on the total amount of tax that was or would have been payable in respect of the supply. The amount to be added is computed for the period beginning on the earliest day on which tax became or would have become payable in respect of the supply and ending on the due date for the return for the reporting period that includes that day.

In addition, because of new paragraph 217(*d*), the recipient in this case is required under Division IV to self-assess the tax that would have been payable in respect of the supply, unless the property was acquired for consumption, use or supply exclusively in the course of commercial activities of the recipient.

New section 1.1 of Part V of Schedule VI applies to supplies made after 2000 for which an export certificate is provided, regardless of when the certificate was issued or last renewed. However, the requirement that a recipient disclose to the supplier an identification number and the expiry date of the export certificate applies only in relation to authorizations granted or renewed after 2000.

As a consequence of the addition of new section 1.1 of Part V of Schedule VI, a related amendment to paragraph 1(*e*) of that Part is made to remove the existing reference in that paragraph to an export certificate.

Section 1.2 Supply for which Export Distribution Centre Certificate is Provided

New section 1.2 of Part V of Schedule VI to the Act zero-rates a supply to a recipient registered for GST/HST purposes of property for which an export distribution centre certificate, within the meaning of new section 273.1 of the Act, is provided by the recipient. The recipient must certify that the property is for use or supply by the recipient as "domestic inventory" or as "added

property" (as those expressions are defined in subsection 273.1(1)). The recipient must also disclose to the supplier the identifying number of the recipient or the authorization to use the certificate, as well as the expiry date of the authorization. Another condition is that the total amount of consideration for eligible property purchased with the use of the certificate and included in a single invoice or agreement must be at least $1000.

As in the case of new section 1.1 of Part V of the Schedule, this zero-rating provision does not apply to excisable goods (as defined in subsection 123(1) of the Act) or to continuous transmission commodities to be transported by or on behalf of the recipient by means of wire, pipeline or other conduit. The latter supplies are covered by separate zero-rating provisions.

Under new section 1.2, as long as the supplier satisfies the condition that the supplier did not know and could not reasonably be expected to have known that the recipient's authorization to use the certificate was not in effect or that the property was not being acquired for use or supply as "domestic inventory" or as "added property", the supply is zero-rated. The recipient alone remains potentially liable under new subsection 236.3(1) and/or under Division IV as a result of new paragraph 217(*e*).

New subsection 236.3(1) requires the recipient to add an amount to the net tax of the recipient for the reporting period that includes the earliest day on which tax became or would have become payable in respect of the supply if it had not been received on a zero-rated basis. The amount required to be added is equal to interest, at the rate prescribed for purposes of paragraph 280(1)(*b*) plus 4% per year compounded daily, calculated on the total amount of tax that was or would have been payable in respect of the supply. It is computed for the period beginning on the earliest day on which tax became or would have become payable in respect of the supply and ending on the due date for the return for the reporting period that includes that day.

In addition, because of new paragraph 217(*e*), the recipient in this case is required under Division IV to self-assess the tax that would have been payable in respect of the supply unless the property was acquired for consumption, use or supply exclusively in the course of commercial activities of the recipient.

New section 1.2 of Part V of Schedule VI applies to supplies made after 2000.

Clause 31

Goods Imported for Repair or Replacement under Warranty

ETA
Schedule VII, section 5.1

Relief from the GST/HST on importations is provided under paragraph 3(*d*) of the *Non-Taxable Imported Goods (GST) Regulations* in respect of goods imported for warranty repair. A condition of this relief is that the imported good must be exported after the repair service is performed. However, where the imported good is replaced rather than repaired, this provision does not apply.

New section 5.1 of Schedule VII ensures that, in a situation where a replacement good is provided under warranty for no additional consideration, other than shipping and handling charges, and is exported in place of the original defective good, no tax is payable under Division III of the Act in respect of the importation of the defective good. In order for this relief to apply, the replacement good cannot be used or consumed in Canada except to the extent reasonably necessary or incidental to its transportation.

New section 5.1 of Schedule VII applies to goods imported after February 28, 2000.

Clause 32

Imported Goods Relieved under Exporters of Processing Services Program

ETA
Schedule VII, sections 8.1, 8.2 and 8.3

Under section 213.2 of the Act, the Minister of National Revenue may issue to a registrant who imports goods an authorization (referred to as an "import certificate") that entitles the registrant to GST/HST relief on certain importations of goods. Amendments to that section specify that the import certificate may be used for

purposes of new section 8.1 of Schedule VII to the Act, which sets out the conditions for obtaining this relief.

Section 8.1 of Schedule VII applies to goods of a non-resident person that are imported by a registrant to whom has been granted an authorization under section 213.2 of the Act. The registrant must import the goods for the purpose of supplying a processing, storage or distribution service in Canada in circumstances in which the goods, or the products of their processing, if any, will subsequently be exported without having been consumed or used in Canada except to the extent reasonably necessary or incidental to the transportation of the goods.

The section also applies to imported goods that are materials (other than fuel, lubricants, and plant equipment) that will be consumed or expended directly in the processing of other goods that will be exported without having been consumed or used in Canada except to the extent reasonably necessary or incidental to their transportation. For this purpose, a broad definition of "processing" applies, which expressly includes the manufacture or production of goods. The extended definition of "processing" for purposes of section 8.1 is set out in new section 8.2 of the Schedule.

Under the conditions of section 8.1, the imported goods cannot be imported for the purpose of having any other services performed on them other than those that are supplied by the importer. Nor can the goods be imported for consumption or use in Canada.

The recipient of the supply of the importer's services must be a non-resident person, though not necessarily the same non-resident person as owns the imported goods or the processed products at the time of their importation or exportation. In other words, the ownership of the imported goods and/or the processed products may change hands among non-residents while the goods are in Canada.

The importer must not obtain ownership or co-ownership of the imported goods or of the exported processed products while they are in Canada. The importer may, however, supply property, such as components or parts, taken from the importer's own inventory, which is added to the imported goods in the course of their processing. This property may be provided by way of a separate supply or may be covered in the overall charge for the processing

service, so long as the terms of the supply are not such that, in so adding this property, the importer becomes the owner or part-owner of the processed products.

The importer cannot be closely related to the non-resident owner of the imported goods or of the processed products or to the non-resident recipient of the importer's services if that is another person. For this purpose, new section 8.3 of the Schedule provides that two persons are considered to be closely related if they would be closely related under section 128 of the Act if they were both registrants resident in Canada.

Another condition under section 8.1 is that the importer must not transfer physical possession of the imported goods or the processed products to another person in Canada (e.g., the goods cannot be drop-shipped to another service provider in Canada). The exception to that rule is where the importer transfers possession of the imported goods or the processed products for the purpose of their storage, their transportation to or from a place of storage or their transportation in the course of being exported.

The exportation of the imported goods or the processed products must occur within four years after the day on which the imported goods are accounted for under section 32 of the Customs Act.

Finally, the importer must disclose, when accounting for the imported goods, the number assigned to the importer under subsection 213.2(1) of the Act and must have provided any security under section 213.1 of the Act that may have been required.

According to subsection 213.2(2) of the Act, a request for an import certificate must be made in prescribed form containing prescribed information and must be filed with the Minister of National Revenue in prescribed manner. The Minister may require a registrant to give security as a condition of obtaining the certificate.

Generally, an authorization granted under section 213.2 remains in effect for three years, and may be renewed upon application. The Minister may cancel an authorization granted to a registrant under that section if the registrant fails to comply with any conditions attached to it or if it is no longer required by the registrant. Where the Minister cancels a registrant's authorization because the registrant

failed to comply with certain conditions, the registrant cannot apply for a new authorization for two years.

Coinciding with the initial proposal for the Exporters of Processing Services Program, the effective date of section 8.1 of Schedule VII is March 1, 1992. The section applies to goods imported on or after that day. While the rules as initially proposed do not permit an import certificate to be used where the importer provides only storage or distribution services, effective for goods imported after February 28, 2000, section 8.1 does apply to goods that are imported for the purpose of providing those services, even if no processing services are also provided.

New sections 8.2 and 8.3 of Schedule VII also come into force on March 1, 1992.

Clause 33

Imported Goods Relieved under Export Distribution Centre Program

ETA
Schedule VII, section 11

New section 11 of Schedule VII to the Act is added as a consequence of the introduction of the export distribution centre certificate system under new section 273.1 of the Act (see commentary on that section). That section empowers the Minister of National Revenue to authorize a person registered for GST/HST purposes to use an export distribution centre certificate to acquire or import certain goods without the payment of GST/HST. In general terms, eligible businesses are those that export substantially all of their outputs, or operate export distribution operations for other businesses, and that provide limited value added in the course of processing goods.

New section 11 provides relief from the GST/HST on the importation of "domestic inventory", "added property" or "customers' goods", as those expressions are defined in new subsection 273.1(1) of the Act, by a person who has been authorized to use an export distribution centre certificate under section 273.1 of the Act. When the good is accounted for under section 32 of the Customs Act, the importer must certify that the importer's authorization under section 273.1 is in effect and must disclose the

number referred to in subsection 273.1(9) as well as the effective date and expiry date of the authorization. The importer must also have provided any security that may have been required under section 213.1 of the Act.

New section 11 of Schedule VII applies to goods imported after 2000.